ENVIRONMENTAL PROTECTION
DIVISION OF SOLID AND HAZARDOUS WASTE

Recycling Rules

Readoption with Amendments:	**N.J.A.C. 7:26A**
Adopted Amendments:	**N.J.A.C. 7:26-5.4 and 7:26G-4.2, 8.1, 9.1, 11.1, and 12.1**
Adopted Repeal and New Rules:	**N.J.A.C. 7:26A-7**
Proposed:	**December 17, 2001 at 33 N.J.R. 4273(a)**
Adopted:	**May , 2002 by Bradley M. Campbell, Commissioner, Department of Environmental Protection**
Filed:	**May , 2002 as R. d. , with technical and substantive changes not requiring additional public notice and comment (N.J.S.A. 1:30-6.3)**
Authority:	N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1E-9, 13:1D-125 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11, and 58:10A-1 et seq.
DEP Docket No:	29-01-11/135
Proposal Number:	PRN 2001-481

Effective Date:

Operative Date: (Six months from Effective Date for the amendments)

Expiration Date:

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing concerning the proposed readoption with amendments and new rules was held on January 16, 2002 at the New Jersey Department of Environmental Protection, 401 East State Street, Trenton, New Jersey. John Castner, Director, Division of Solid and Hazardous Waste, served as the hearing officer. Three persons presented oral testimony at the hearing. Mr. Castner recommended that the Department adopt the proposed readoption with amendments and new rules as described in this notice of adoption.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention Docket Number 29-01-11/135
401 East State Street
P.O. Box 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

Commenters submitted written and oral comments on the proposal. The number in parentheses after each comment corresponds to the number of the commenter below:

1. Andrew Wade, Wade Environmental Industries
2. John Haas, Ocean County Department of Solid Waste Management
3. David Zimet, Hesstech

4. Cielo DeStefano, Environmental Compliance Coordinator and Richard S. Gribbin, Vice President – Technical Services, Braen Stone Industries, Inc.
5. Stephen Reiter, CEO, Nature's Choice Corporation
6. Edward J. Windas, Recycling Manager, Middlesex County Improvement Authority
7. John R. Purves, Esq.
8. Charles M. Norkis, P.E., Chief Engineer, Cape May County Municipal Utilities Authority
9. Albert Fralinger, III, President, Association of New Jersey Recyclers
10. John C. Kicks, Wyckoff, New Jersey
11. Heather S. Bowman, Director of Environmental Affairs and Deputy General Counsel, Electronic Industries Alliance
12. Alan W. Avery, Jr., Director, Ocean County Department of Solid Waste Management
13. Andrew H. Anderson, Commissioner, Borough of Beach Haven
14. James J. Blaney, Senior Environmental Health Specialist and Linda Morehouse, Supervising Environmental Health Specialist, County of Bergen Department of Health Services, Environmental Program
15. Nicholas R. Smolney, Director of Special Services, Middlesex County Utilities Authority
16. William F. Layton, Executive Director, New Jersey Concrete and Aggregate Association
17. Larry Gindoff, Solid Waste Coordinator, Morris County Municipal Utilities Authority
18. Neil P. Mulvey, Senior Associate, Dewling Associates, Inc. and Angelo G. Rotondi, President, S. Rotondi & Sons, Inc.
19. Richard J. Hills, Division Head, County of Middlesex, Department of Planning, Division of Solid Waste Management
20. Charles, DeWeese, SoilSafe
21. James Butler, Regulatory Compliance Officer, Cycle Chem, Inc.

N.J.A.C. 7:26 General

1. COMMENT: The commenter asked if once these regulations are put in place after the public comment, will there be a point person or a point committee that can address questions which arise? Having such a contact would help to ensure that facilities do not get into enforcement problems. Also, there needs to be a quick way to do this rather than having to wait months before getting an answer. (1)

RESPONSE: The Department does not believe that it is necessary to designate a point person or develop a special committee to address questions arising from this readoption with amendments and new rules. Staff from the Department's Division of Solid and Hazardous Waste and the Department's Enforcement Program were instrumental in developing the provisions of this adoption, and are available to answer any questions which may arise.

2. COMMENT: The commenters stated that generally the proposal was good, although the rules for recycling seem to be getting more burdensome. (2) (12) (13) Examples of good provisions are the leaf transfer provision for residents dropping off leaves at municipal convenience stations, and allowing municipalities and counties to handle computers. (2) The Department should remember, however, that State law requires a recycling rate of 60 to 65 percent. In order for the municipalities, counties and the state to achieve these goals, recycling should be encouraged. The proposed recycling rules are making that a little more difficult by adding numerous requirements, where in many cases, some thoughtful enforcement could accomplish the same goal. For example, one area of concern is the rules and the Department's practice of requiring currently exempt facilities to obtain a Class B or a Class C permit. (2) (12) (13) If the number of exempt facilities processing brush in the commenter's county is reduced, the existing permitted Class B recycling centers will not have sufficient processing capacity to accommodate all the brush that is generated in the county. This is a waste of public funds and will result in a reduction in the recycling rate for this material statewide which has been successfully recycled in the commenter's county since 1987. Moreover, a large municipality with a mature deciduous forest

should have the same opportunity to operate as an exempt facility as a small town for their leaves. (12) (13) Municipalities which will be required to obtain a Class B or a Class C permit will bear a heavy cost. There are engineering costs to prepare the application and the site plan. After application fees and the inspection fees are added, the cost could be from $30,000 up to $45,000 in fees per municipality per permit. From a public policy perspective, the Department should try to keep municipalities and counties as exempt facilities and keep the Class B and C, or at least the B facilities, for the private sector. (2) (12) (13).

RESPONSE: The Department appreciates the commenters' support with respect to the noted provisions. With respect to Class B and Class C facilities, the Department is not aware of any proposed changes to the regulations that would require an exempt facility to obtain a Class B or Class C General Approval. If a facility meets the requirements of an exemption, a General Approval is not required. If a facility wants to operate on a larger scale, however, a General Approval is necessary whether that facility is a municipality or not. The Department does not and cannot distinguish between private and public recycling centers, since the impacts to the public and the environment are the same from both. The Department has added exempt activities that provide municipalities with new outlets for yard trimmings that will most likely have the opposite effect. Many municipalities currently operating compost facilities under General Approvals can take less material to the compost site and qualify for exemption while managing the remainder via new exempt activities. The Department does not allow facilities operating under a General Approval for Class B, C, or D materials, however, to also operate under an exemption. Any related activity occurring at the facility must be included in the approval issued to the facility. The Department does allow exempt activities for different classes of recyclable materials at approved facilities. For example, a municipality operating a Class C facility may also run an exempt Class B operation at the same facility provided all of the requirements of the exemption are met. An approved Class B facility may not perform, however, an exempt Class B activity.

3. COMMENT: The commenter stated that given the detailed limitations and requirements contained in a General Approval, the Department should provide an opportunity for an applicant

to review and comment on a draft permit. The commenter's recent experience shows that often times either the applicant or the Department may misunderstand or misinterpret language which is then incorporated into a final five-year General Approval. This can be problematic. Review of a draft permit would likely eliminate the need to submit formal permit modification requests, thereby saving resources for both the Department and the applicant. (18)

RESPONSE: The Department respectfully disagrees with the commenter's statement that the review of a draft General Approval is necessary. The Department allows recipients of a General Approval 20 days to review the Approval and request changes. Moreover, the Department believes issuing a draft General Approval for review and comment will unnecessarily delay a facility from receiving their Approval.

4. COMMENT: The commenter stated that if he understands permitting requirements correctly, permits would be needed as follows: No permit or approval is needed for universal waste "handling" activities, a Class D permit only would be needed for recycling operations since these operations are exempt under the federal Resource Conservation and Recovery Act (RCRA) Treatment, Storage, and Disposal (TSD) facility regulations, and a RCRA TSD permit would be required for storage for recycling in addition to the Class D permit. The commenter noted that no time limit is specified for "storage for recycling" but it appears to be an activity related definition. This would imply that a recycler would have to receive, process and ship the material basically the same day or a RCRA TSD permit would be needed for storage. The commenter believes this requirement would seriously impede recycling operations and would be particularly true regarding "oil finishes" where bulking or consolidation is almost a necessity. It does not make much sense that a recycler would need two permits (Class D and RCRA) to store material when a handler can store material for a year with no permits. The commenter suggested a number of different resolutions. First, Class D facilities could be considered to have a "permit-by-rule" for storage activities. Secondly, the allowable handler activities could be expanded to include common processing activities. Operations such as bulking, filtering or consolidating oil finishes are operations that can be done by anybody anywhere except when it is called a "waste." Under the

hazardous waste rules, transporters can consolidate like waste . Therefore, the commenter asked why they can not perform the same consolidation activities when the waste is called a "universal" waste. Lastly, storage at recyclers could be considered to fall under the RCRA generator provisions where a permit would not be needed if storage was less than 90 days. (21)

RESPONSE: The Department confirms that neither a RCRA TSD nor Class D recycling center approval is needed for universal waste handling activities provided the materials are not being processed by the handler, except for those processing activities specifically exempted in the universal waste regulations. With respect to destination facilities which recycle the universal waste, a Class D recycling center approval and/or a RCRA TSD facility permit would be needed if the facility is located in New Jersey. A RCRA TSD permit is necessary for recycling facilities which need to store the universal waste prior to the recycling process. The Department corresponded with the United Stated Environmental Protection Agency (USEPA) on this issue during the development of the rule. The USEPA does not interpret the prohibition on storage to mean that the wastes must be processed immediately upon receipt, and points out that some states interpret "immediate" to mean the same day, while others allow longer periods of time. The USEPA further specifies that it is not permissible for a company to set up side-by-side handling and processing areas in order to avoid the proscription. The Department anticipates that same-day processing will be practical in some cases, such as processing of lamps in a self-contained crusher. In the case of electronics demanufacture, a few days may be necessary to introduce all materials to processing, and more may be needed to complete the processing. Since no paint consolidators took part in the Department's pilot universal waste processing program, the Department will need to work with prospective processors on an appropriate interpretation of the regulations. The Department notes, however, that all permits and/or approvals place limits on amounts that processors may accept daily or monthly or on maximum quantities which may be held on site, to prevent processors from stockpiling more than they can process in a short time. Handlers will need to arrange appropriate delivery dates to accommodate the capacity of the processor.

If a facility must store material for a period of time prior to recycling, a strict reading of the

regulations would require the facility to have two approvals, a RCRA TSD permit and a Class D Recycling Center Approval. The Department has sufficient flexibility to work with facilities with respect to the short term staging of universal wastes prior to recycling, therefore, in most cases only a Class D Recycling Center Approval would be needed. The Department will include appropriate conditions for the short term staging of universal wastes and other recyclable materials in a facility's Class D Recycling Center Approval.

With respect to the commenter's suggestion that handler activities should be expanded to include common processing activities for the State-only universal wastes, the Department had not considered such processing activities in the development of its proposal. As such, the Department is not at liberty to expand handler activities upon adoption since doing so would circumvent the public process. Additionally, the Department is required to gain prior approval from the USEPA for any additional universal wastes it lists and the regulations it promulgates to govern the generation, handling and processing of same. The Department may consider such a change in a future rulemaking, however, and requests that the commenter provide more specific information as to which processing activities should be included and why.

With respect to universal waste transporters consolidating like wastes, the Department notes that 40 C.F.R. 273.53 (incorporated by reference at N.J.A.C. 7:26A-7.6) allows a universal waste transporter to only store universal waste at a universal waste transfer facility for ten days or less. The Department can not allow a universal waste transporter to perform other non-storage activities, because universal waste transporters are not subject to the same environmental controls and protections as hazardous waste transporters pursuant to N.J.A.C. 7:26G-7.4.

Lastly, the Department has considered the commenter's suggestion that storage at recyclers could be considered to fall under the RCRA generator provisions. The Department notes that allowing such storage would make New Jersey's program less stringent than the Federal RCRA program. Therefore, the Department cannot consider the commenter's suggestion at this time.

5. COMMENT: The commenter requested that the Department address and or clarify the following regarding New Jersey only universal waste and out-of-state facilities. If New Jersey only universal wastes are shipped out of state or brought into New Jersey, New Jersey hazardous waste manifests are needed. The commenter asked if this would imply that a handler or recycler would be a larger quantity generator and have to file recycling and hazardous waste reports and fees. The commenter stated that recyclers are exempt from RCRA TSD permitting, so they can ship, process and receive manifested hazardous waste (for recycling) without a RCRA TSD permit. The same does not appear to be true, however, for handlers. The commenter questioned if a handler is shipping material out-of-state using manifests, would they be considered a hazardous waste generator or a facility handling off-site hazardous waste and thus need a RCRA TSD permit. The commenter wishes to know whether a handler would be precluded from handling any out-of-state material. (21)

RESPONSE: In its universal waste adoption on May 11, 1995 (see 60 Fed. Reg. 25492), USEPA clarified the interstate transportation of universal wastes. Wastes which are subject to the universal waste regulations in one state may be sent to a state where they are not a universal waste. In such cases, the waste would be subject to the full hazardous waste regulations in the receiving state. For the portion of the trip through New Jersey (and any other states where the waste is a universal waste), a manifest would not be required. However, for the portion of the trip in the receiving state (and any other states that do not consider the waste to be a universal waste), a manifest is required. The manifest used for this portion of the trip would be obtained from the receiving state. Similarly, waste which is not a universal waste in the initiating state but is a universal waste in New Jersey may be received by a New Jersey handler or destination facility. While a manifest would not be required for the New Jersey portion of the trip, one is required for the portion of the trip through the initiating state. It would be the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility. Again, the manifest used for this shipment would be that of the initiating state and not a New Jersey manifest. Therefore, New Jersey handlers either receiving New Jersey only universal waste from out-of-

state, or shipping New Jersey only universal waste to an out-of-state destination facility, would not automatically become larger quantity generators, subject to filing recycling and hazardous waste reports and fees. Additionally, a handler shipping a New Jersey only universal waste out-of-state using a manifest would not be a hazardous waste generator unless the handler qualifies as a hazardous waste generator due to the other types of waste generated. Lastly, the Department notes that the in-state handler may need a Class D general approval if the handler is recycling a New Jersey only universal waste received from out-of-state.

6. COMMENT: The commenter complimented the Department on the rulemaking process it utilized this time because many of the concerns expressed during the interested party review meeting have been addressed in the proposed rules. The commenter noted some examples of what it believes are good provisions: leaf transfer provisions for residents dropping off leaves at municipal convenience centers, and municipalities and counties classified as handlers of computers and consumer electronics. (12) (13)

RESPONSE: The Department acknowledges and appreciates the commmenter's support.

7. COMMENT: The commenter stated that brush, tree parts, and stumps from commercial sources such as land clearing, landscapers, etc., should be directed to Class B recycling centers. The Department's policy should encourage commercially generated brush, tree parts and stumps to Class B recycling centers to promote the economic viability of these recycling operations. (12) (13)

RESPONSE: The Department believes the commenter's statement is unclear. While the Department encourages the recycling of wood materials, it cannot require wood material from any source (commercial, residential, or otherwise) to be sent to Class B recycling centers. Wood material is permitted to be disposed of as a solid waste. The Department believes that generators of wood material, however, will experience a cost savings by recycling the material rather than disposing of it a solid waste.

8. COMMENT: The commenter stated that the Department's regulations should provide a grandfather clause or some period of time for existing facilities to come into compliance with the new rules and amendments. The regulations as proposed do not appear to work with the existing facilities. The regulations treat existing facilities as if they are brand new entities. This is not true and to treat them as such is an injustice. Moreover, when the Department does not recognize these facilities as existing facilities, new zoning requirements can be triggered. This is an additional concern for facilities located in the Pinelands, which has some very strict regulations where they do not want to allow waste facilities to be constructed. When the Department calls an existing facility a new operation, the Pinelands looks at it and receives it as a new type of business, when indeed it is not a new type of business. (1)

RESPONSE: The Department is not certain what the commenter means by the term "existing facilities." If the commenter means those recycling facilities which have received a General Approval prior to the operative date of this adoption, the Department agrees that time should be provided for these facilities to meet the new engineering requirements. The Department has delayed the operative date of all amendments by six months. (See also response to Comment 76.) If by "existing facilities" the commenter means operating facilities which have not heretofore been required to have a General Approval or other form of operating authority from the Department, but will require same when the amended provisions become effective, the Department is not aware that any such facilities exist. Any facility newly regulated subsequent to the effective date of this adoption, however, would need to comply with appropriate application requirements on the operative date. Lastly, with respect to the commenter's concern regarding facilities located in the Pinelands, the Department routinely works with the Pinelands Commission to ensure consistency of interpretation when both the Department's and the Pinelands Commission's regulations are applicable.

<u>N.J.A.C. 7:26-5 Civil Administrative Penalties and Requests for Adjudicatory Hearings</u>

9. COMMENT 7:26-5.4(g)8: The commenter stated that use of penalty assessments by the Department should be restricted to instances of continuing non-compliance after notice and opportunity to cure and/or abate is granted except where a clear and present danger to life, injury or property exists. Penalty assessments as specified herein should only be invoked on the second infraction per year except when critical circumstances as noted above are present. The present penalty assessment procedure works as an economic disincentive to effectuating increased recycling by increasing costs to recycle for minor infractions. (15)

RESPONSE: The Fast Track Compliance law (also known as the Grace Period Law) allows for the correction of violations without monetary penalties, provided the criteria for grace period eligibility are met. Specific criteria include a classification of the violation (minor or non-minor), a review of the compliance actions undertaken in response to the violation and a review of the frequency of violation. Provided the violation is minor, is corrected within a specified timeframe and the rule was not cited within the previous year, no penalties will be assessed against the facility.

10. COMMENT: The commenter stated that the "proposed assessment to incorporate a fine of $1,000.00 for labeling as biodegradable plastic any material for sale or use with the State of New Jersey that does not meet the definition of BIODEGRADABLE PLASTIC pursuant to proposed N.J.A.C. 7:26A-1.3 Definitions." (15)

RESPONSE: The Department did not propose any penalty of $1,000 nor amend any penalty which relates to biodegradable plastic. Because the intent of the comment is unclear, the Department is unable to respond further.

11. COMMENT: The commenter stated that the Class B recycling community is extremely frustrated over the lack of enforcement on mobile units. Renegade mobile operators in most cases

are operating without the proper permits and are not playing by the same rules as the rest of the industry. The commenter understands that it is easier for the Department's enforcement personnel to conduct inspections of already existing operations, but some effort needs to be made to address the growing problem of mobile units. In addition, the commenter stated that the community also feels very strongly that these types of operations should not be considered construction equipment. These facilities are processing units and should be treated as such. Moreover, the commenter stated that facilities with proper permits are currently over inspected. The commenter suggested that the Department consider coming up with some type of inspection schedule – perhaps twice a year. This would be more than adequate and would provide the Department's enforcement personnel with more time to go after the renegade mobile operators who are not properly permitted to operate. (16)

RESPONSE: The Department is confident that, due to the interest shown in these types of activities by competitors and affected community members, and their historical willingness to report such activities to the Department, illegally operating sites are sufficiently monitored to identify violators. In addition to its regularly scheduled inspections, when information is received by the Department alleging noncompliance with the regulations, the Department will investigate the allegation and take enforcement action as appropriate. With regard to the commenter's remarks regarding the current inspection schedule for Class B facilities, this was increased from quarterly to monthly for the same reasons identified in the response to comment 12 below, increased volumes handled and increased complaints.

12. COMMENT: The commenter stated that compost facilities are inspected on a monthly basis. (17) (18) Once windrows are laid out, the basic function is the weekly turning, which the commenter likens to "watching paint dry." (17) During these times of financial concerns, it would appear that better use could be made of the Department's resources. (17) (18) . Better use of an inspector's time could be made rather than redrawing the layout of the windrows, measuring windrows and finding reasons to issue Notices of Violation (NOVs) to justify their positions. (17) There are countless hazardous materials manufacturing and handling facilities in New Jersey who

receive considerably less attention. (18) The commenter also stated that exempt facilities are not inspected on a monthly basis because inspections fees are not included in the fee structure. The commenter recommends, therefore, reducing the number of inspections to possibly quarterly inspections or to as needed basis. (17) The commenter stated that the Department should reevaluate the risk of a recycling center versus a hazardous material handling facility and reassign resources based on real environmental risk. (18)

RESPONSE: The Department currently inspects facilities which have received a General Approval to operate as Class C facilities on a monthly basis and compost facilities which are exempt from the requirement to obtain a General Approval on a semi- annual basis. Exempt compost facilities are inspected semi- annually rather than monthly as they process less volume than do the Class C facilities. In the past, the Department inspected large compost facilities on a quarterly basis while most exempt facilities were inspected by local authorities, with no set inspection schedule. In response to increases in recycling rates for leaves, brush and food wastes coupled with increases in complaints regarding these sites, the Department increased its inspections to the current levels. The Department believes its enforcement resources are appropriately allocated. With regard to the comment regarding reallocation of resources, the Department carefully monitors compliance trends and the level of community interest and concern in the operations of recycling facilities. Recycling facilities that are operated in compliance with their operating authority and regulations and do not impact the health and welfare of the community in its vicinity require less oversight by the Department's enforcement program. Enforcement resources are reallocated on a case by case basis when a recycling facility is managed in this manner.

13. COMMENT 7:26-5.4: The commenter stated that the Department's violation process causes concern and that "basically there are set penalty numbers - $2,000, $4,000, $5,000 – those kind of ranges. These penalty amounts need to be lowered to $500, and then increased in $250 increments." (1)

RESPONSE: The baseline penalties were established based on the typical penalties that the Department historically assessed under the penalty matrix, assuming minimal environmental damage and immediate compliance. The Department believes that the baseline penalties are effective as an enforcement mechanism to compel compliance.

14. COMMENT 7:26-5.4: The commenter stated that to promote and maintain the viability of composting within the State, the Department should amend its zero tolerance policy and move toward a system which focuses on environmental harm. A grading system should be used for inspections, one which allows for a "passing score" and no violations absent true environmental harm. (5)

RESPONSE: The Department respectfully disagrees that it maintains a "zero tolerance policy" with regard to compost regulation. Additionally, all assessments currently include an analysis of the actual as well as the potential harm that has or could occur as a result of the particular violation. The Fast Track Compliance Law (also known as the Grace Period law) allows for the correction of violations without monetary penalties, provided the criteria for grace period eligibility are met. Specific criteria include a classification of the violation (minor or non-minor), a review of the compliance actions undertaken in response to the violation and a review of the frequency of violation. Provided the violation is minor, is corrected within a specified timeframe and the rule was not cited within the previous year, no penalties will be assessed against the facility.

15. COMMENT 7:26-5.4: The commenter stated that the Department should foster a closer association between its enforcement and engineering programs to work with the regulated community in a non-adversarial manner, without the threat of a penalty assessment. The

majority of facilities possess an environmental compliance awareness and would be willing to work within the Department's guidelines given ample opportunity. (1) (6) Facilities which recycle yard waste in New Jersey differ from each other in their operating practices. They do not,

therefore, all fit into the "boiler plate" scenarios established under the regulations. Under the regulations as proposed, a Department inspector could enter any site, at any time, and issue a Notice of Violation (NOV) for non-compliance. Realistically, facilities cannot operate in strict adherence to the regulations at all times. (6)

RESPONSE: The Department's enforcement program works with the industry to foster compliance with the regulations. (See also response to Comment No. 17 below.) Notices of Violation do not assess a penalty. They constitute a warning that a penalty may be imposed.

16. COMMENT 7:26A-5.4: The commenter stated that the establishment of decreased civil administrative penalties under N.J.A.C. 7:26-5.4, will make the Department's enforcement program more inclined to impose penalty assessments under the supposition that the penalty amounts are not financially restrictive on a municipality or county program. Moreover, it is generally understood throughout the regulated community that the Department's Bureau of Enforcement will be enacting a policy that requires a mandatory penalty assessment after a second Notice of Violation is issued for the same alleged infraction. (6)

RESPONSE: No decreases in the civil administrative penalties were proposed; the Department merely updated the penalty table to reflect recodifications of regulatory provisions. Moreover, the Department does not anticipate assessing a greater number of civil administrative penalties as a result of this readoption. Penalties serve primarily as a tool to compel compliance, deter future violations, and remove any excessive profit or advantage to an entity that a continuing violation may provide. The Department's enforcement program assesses penalties consistently but on a case by case basis based on the facts of a particular situation as known to the Department. Typically, unless a prior enforcement history existed or other egregious factors were present, the initial penalty assessment to a regulated entity would be the appropriate baseline penalty amount.

In this readoption, the Department is not adding any baseline penalty citations. The existing baseline penalties are amended to make them consistent with regulatory changes incorporated into this readoption. The Department typically issues a penalty to a facility for failure to respond to and comply with a formal Notice of Violation issued by the Department. (See also response to Comment No. 17 below.)

17. COMMENT 7:26-5.4: The commenter stated that Notices of Violation (NOV) should not be issued if a violation can be addressed before the inspector leaves the facility. Additionally, if a violation can be addressed within twenty-four hours, then the NOV should be rescinded. The Department should permit the facility operator to certify that the violation was addressed, subject to verification by the Department. Such an approach would recognize the dynamic activity of a facility and the fact that the receipt and handling of the material is subject to forces and events which are not controlled by the operation (for example, temperature, precipitation, wind direction, etc.). This approach would also recognize the nature of the material involved and the degree of potential environmental and human health impact. (5)

RESPONSE: The Department works with facility operators towards obtaining compliance. When considering whether a given situation warrants the issuance of a formal NOV, the Department has and will continue to take into consideration circumstances beyond the control of the operator. A Notice of Violation, if issued, is rescinded only when additional information reveals that the notice was issued in error. That is why the NOV form itself requests a written response to the allegation contained in the NOV. This gives the recipient the opportunity to explain the circumstances of the violation. Recipients of NOVs are urged to avail themselves of this opportunity to bring information to light refuting or explaining any mitigating circumstances surrounding an NOV. Should the violation be corrected as appropriate, unless there are negative factors such as history, significant environmental impact, or intent, the action generally ends with the NOV and the violator’s response being filed. No further enforcement action is taken. Since the Department does utilize historical NOVs as a part of its determination of the compliance

history of a site, the regulated community is urged to ensure that NOVs are responded to and complied with in a timely manner. (See also response to Comment No. 9 regarding grace periods to correct minor violations.)

18. COMMENT 7:26-5.4: The commenter stated that inspectors should review draft violations or NOVs with the facility operator prior to being finalized. This would avoid inappropriate accumulation of NOV's that might be mistakenly issued and it would allow for a cure period. (5)

RESPONSE: The Department typically attempts to discuss the results of a compliance visit with the regulated entity prior to leaving the site. This time is utilized to allow an exchange of information which may result in a clarification of the issues or circumstances and thus does at times dissuade the Department from issuing an Notice of Violation. This situation is generally to the advantage of the facility. However, at some facilities, the supervisor on site is not authorized or inclined to speak to the inspector about the results of an inspection. In that case, the Department representative must base the conclusion of his inspection solely on what he believes to be the facts of the matter as observed by him during his inspection. Occasionally, an inspector may decline to discuss the results of an inspection with the regulated entity or to make a decision regarding the compliance status of a facility prior to conferring with Departmental supervisory, legal, or engineering staff.

19. COMMENT 7:26-5.4: The commenter stated that there should be no mandatory fines and/or fines associated with each activity. (5)

RESPONSE: The Solid Waste Management Act authorizes the Department to assess penalties for violations of the Act. While the Department has determined that many regulations do not warrant a penalty for first time violations, other violations (such as operation of an illegal solid waste facility) have been determined to be enough of a real or potential significant impact so as to be subject to the assessment of a penalty for first time violators. The assessment of a civil administrative penalty assessment remains discretionary subject to case specific factors,

enforcement history, environmental impact which are all applied at the supervisory or management level to ensure a "check and balance" to the inspector's work and conclusions. The Department assesses penalties as a last resort to compel compliance or provide a deterrent to future violations.

20. COMMENT 7:26A-5.4: The commenter stated that the penalties for violations of N.J.A.C. 7:26A-4.1(a) and (b) are clearly excessive. Over the past two years, enforcement personnel have been strictly enforcing any violation of compost facility permits. This has resulted in Notices of Violation (NOVs) for minor technical violations. The Department should understand that recycling centers are not disposal facilities or illegal operations. These facilities are the “good guys”, performing a valuable service to the State and society. New Jersey already regulates composting facilities to a greater extent than any other state. Excessive enforcement on recycling facilities will create animosity between the regulated community and the Department. To further compound this with these penalties is excessive, unwarranted, and counterproductive. Moreover, it is unnecessary and not good policy. The penalties for minor technical violations of the above-referenced provisions should be in hundreds of dollars, not thousands of dollars. (7)

RESPONSE: The Department believes the baseline penalties are appropriate and consistent with the potential impact of the violations. It should be noted that the Department rarely issues penalty assessments against a first time violator for minor infractions.

N.J.A.C. 7:26A-1.3 Definitions

21. COMMENT 7:26A-1.3: The commenter questioned whether burning for energy recovery is considered an acceptable recycle activity under the universal waste provisions for oil finishes. (20)

RESPONSE: Pursuant to N.J.A.C. 7:26A-1.3, the Department defines "recycling" as "any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products". Therefore, the Department would not consider burning for energy recovery an acceptable

recycling activity for oil-based finishes and would not issue a Class D Recycling Center approval for this type of activity. In addition, the burning for energy recovery of hazardous (universal) waste oil-based finishes would be subject to hazardous waste facility permitting requirements under N.J.A.C. 7:26G-1 et seq. and the Department's air pollution control program permitting requirements under N.J.A.C. 7:27-1 et seq.

22. COMMENT 7:26A-1.3: The commenter asked that the Department include mercury flasks or other similar type containers under the definition of mercury devices. While mercury flasks meet the regulatory requirement that the mercury be in a closed containers, they are not technically devices. The commenter stated that no additional risks would result. (20)

RESPONSE: The Department is concerned that these flasks hold significant amounts of mercury. The rupture of even only a few flasks would pose an unacceptable risk. The Department would be interested in discussing with the regulated community, however, the proper recycling route for these items. With a better understanding of the flasks and their contents, the Department may consider including such flasks within the definition.

23. COMMENT 7:26A-1.3: The commenter stated that the definition of Class D recyclable material does not include pesticides but the definition of universal waste still does. Subchapter 7 incorporates 40 C.F.R. 273 which includes pesticides (see N.J.A.C. 7:26A-7.1(c)(1)), but N.J.A.C. 7:26A-7.1(e) does not. The commenter requested that the Department clarify when, or if, pesticides can be handled as universal waste. The Federal description of pesticides includes "unused pesticides which are collected and managed as part of a waste pesticide collection program (40 C.F.R. 273.3(a))." The commenter also asked if this includes household waste collection activities. (20)

RESPONSE: While pesticides are listed as universal wastes, the Department has not included them as Class D recyclable materials since pesticides are not typically recycled. Therefore, pesticides may be managed as universal waste, but may not be managed at a Class D recycling

center. With respect to collection programs for unused pesticides, the USEPA intended these programs to be either those associated with a Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. §§136 et seq.) recall or those organized by state agricultural departments to collect and properly dispose of unused pesticide products from long term accumulation on farms. The Department does not believe that the USEPA intended the provision to extend to household waste collection activities.

24. COMMENT 7:26A-1.3: The commenter stated that the proposed definition for consumer electronics causes concern. As proposed, it means any appliance used in home or business that includes circuitry. If the regulations are adopted as proposed, a number of things could happen. Every Class A scrap metal company in New Jersey could be put out of business. The cost for appliances will increase significantly, as would automobiles to be recycled, causing massive pile-ups of these items throughout the State and illegal dumping. Local communities and counties will be overburdened with costs, which is why the Department needs to recognize existing facilities for consumer electronics. Minnesota has been pulling out mercury switches and capacitors for about ten years with the average cost about $25.00 per appliance, but Minnesota does not have as comprehensive a Class D regulation package as the State of New Jersey is proposing. The Department should meet with Class A scrap metals dealers throughout the State to develop reasonable guidelines, permitting, and timeframes to implement this. Moreover, the Attorney General's office should also be included to help develop some criteria since mercury switches and/or mercury containing devices have been historically and commonly used for terrorist activities, especially given what happened on September 11th. You are going to be generating mercury switches that are probably not going to be traceable. There should be some control over that just from a terrorist standpoint. (1)

RESPONSE: The definition of consumer electronics does not apply to Class A materials such as steel, including automobiles, since these materials are presumed to be non-hazardous. As such, they can continue to be handled through the Class A system. Additionally, the adopted amendments will not obligate any handler to manage materials as universal waste as the universal

waste program is optional.

The Department's broad definition of consumer electronics was designed to avoid the limitations of the United States Environmental Protection Agency's (USEPA) rule, in which the USEPA allows demanufacture of thermostats, but does not allow removal of identical ampules from other household goods. The USEPA recognized this limitation, and encouraged states to include additional items. The Department cannot list every device that might be hazardous waste; such a list would become obsolete as new products enter the marketplace. The Department, therefore, has defined consumer electronics broadly so that facilities developed to handle one or two items can add similar items. The Department believes the amendments will help collection programs capture hazardous waste items that now either escape into solid waste facilities, at potential environmental cost, or are disposed at hazardous waste facilities at great monetary cost.

With respect to the commenter's opinion that mercury ampules may complicate the assurance of national safety, the Department notes that mercury is commercially available. It is unlikely the Department could prevent potential terrorists from obtaining mercury by halting mercury recycling operations.

25. COMMENT 7:26A-1.3: The commenter stated that clarification is needed regarding what will specifically be regulated under the definition of consumer electronics. The proposed definition includes, but is not limited to, televisions, computers, monitors, etc. Questions have come up regarding the reason for products like printers, keyboards, mice, or peripherals that do not really have any toxic components or add any toxicity to the waste stream. Clarification is needed on those types of products. The commenter's impression is that the goal of universal waste is to address the detoxification of the waste stream, not reducing the volume. If, however, the aim of the Department is to reduce volume of materials going into disposal facilities such as landfills and incinerators, then available markets for these non-toxic products must be addressed. Although much progress has been made in the plastics recycling industry, more still needs to be made regarding a good stable market for engineering plastics. (3)

RESPONSE: The Department concurs that computer peripherals and non-computer electronics seldom fail the Toxicity Characteristic Leaching Procedure (TCLP) test (the USEPA's definitive test for toxicity under the hazardous waste regulations). Most citizens, however, lack knowledge of what should be collected and what should not be collected. Household collection programs will no doubt pull in items that can be discarded as solid waste, and businesses, when sending computers for recycling, will send some of these items as well. This does result in the demanufacture of items that yield large volumes of plastic, which is hard to market. The Department is aware of the need for new markets for plastics. The Department cannot agree, however, that only the lamps or CRT portion of computer related consumer electronics would fail the TCLP test. The items may contain batteries or other sources of toxic metals that are not exempted as scrap metal or normally handled by the steel recycling industry. The Department does not intend to divert items from scrap metal processing to Class D facilities, but recognizes that household goods are not uniformly collected for scrap metal. The Department also refers the commenter to the response to Comment No. 24 above, for further clarification on the definition of consumer electronics.

26. COMMENT 7:26A-1.3: The commenter requested clarification in the addition of "wood chips" to the definition of yard trimming. If wood chips are processed by an approved recycling facility into a saleable product and then moved off site for storage awaiting sale, would the new site fall under the recycling facility regulations if it did not meet the brush exemption? (19)

RESPONSE: The Department does not consider the stockpiling of wood chip mulch awaiting sale to be a recycling activity. However, receiving and processing wood chips into mulch or compost is a recycling activity subject to these rules. In the scenario presented by the commenter, the wood chips have not reached their end-market and therefore, the wood chips are still a regulated material. The storage of these wood chips would require a Class B approval for the site.

27. COMMENT 7:26A-1.3: The commenter noted that the Department's proposal amended the

Department's definition of yard trimmings to include wood chips from tree parts. It has previously been Departmental policy to classify wood chips as a Class B Recyclable Material. The commenter questioned whether the proposed amendment represents a major change in the Department's policy. (14)

RESPONSE: The proposed amendment does not represent a major change in the Department's policy. Wood chips from tree parts, like brush and leaves, can be considered either Class B or Class C recyclable material. It depends on whether the wood chips are processed to make wood chip mulch or if the wood chips are composted to produce compost. The reason that a distinction is made is that different design and operational requirements apply to different processes. The change in definition was meant for clarification.

28. COMMENT 7:26A-1.3: The commenter supported the expansion to the definition of yard trimmings to include wood chips. The Department needs to explicitly state in the regulations, however, that tree parts that are ground into wood chips on site are Class C recyclable material. There is no basis to distinguish between wood chips that are transported to the site and wood chips that are ground on site. (5)

RESPONSE: The Department appreciates the commenter's support. The Department notes, however, that tree parts are Class B recyclable materials because they are not considered compostable. The wood chips and brush included in the definition of yard trimmings must be readily compostable to be considered Class C recyclable material. If any brush or wood chips require a size reduction step prior to composting, this material is considered Class B recyclable material.

29. COMMENT 7:26A-1.3: The commenter stated that under the definitions, aerosol cans are listed as a hazardous waste. It is the commenter's understanding that when aerosol cans are generated from households, they are exempt. (2)

RESPONSE: The Department confirms that hazardous waste generated by households is exempt from hazardous waste regulation in accordance with 40 C.F.R. 261.4(b)(1) incorporated by reference prospectively at N.J.A.C. 7:26G-5. This is because the USEPA determined in its original hazardous waste rulemaking that it would be too burdensome for households to send their small amounts of hazardous waste to hazardous waste disposal facilities. Nevertheless, wastes such as aerosol cans present an environmental and health danger especially when generated in larger quantities by businesses and industry. The USEPA recognized that they should encourage the recycling of household hazardous waste, and, therefore, provided for inclusion of household waste which is similar to waste generated by businesses and industry under its Universal Waste regulations. The Department, in its adoption of the Federal Universal Waste regulations, is providing households with an additional environmentally sound means of handling this waste, by allowing it to be handled in the same collection system as similar wastes generated by businesses and industry. The adoption of the Universal Waste regulations, however, does not preclude a resident from continuing to utilize any available municipal or county household hazardous waste collection program for collection of any universal waste generated.

30. COMMENT 7:26A-1.3: The commenter opposed the Department's statement that the biodegradable plastic bags offered in today's marketplace are acceptable to go into compost windrows, regardless of the processing equipment being used. The commenter has tested all of the bags on the market, and regardless of the bag or processing equipment, raw compostable product with allegedly biodegradable plastic bags is incapable of producing a marketable finished product. (9) (2) The commenter has conducted a number of tests on so-called "biodegradable bags" and none have worked satisfactorily. Some of the bags work if there is a very small percentage of bags in a windrow. A windrow full of "biodegradable bags" will not produce an acceptable product. (12) If the Department allows the use of biodegradable bags, municipalities will use this as an argument to force their acceptance, and the compost operation will be stuck with a large amount of compost that will be very difficult to market. The Department should give more thought to approving biodegradable bags. (2) The Department should remove the reference to biodegradable plastic bags. (9)

RESPONSE: While the Department recognizes that several versions of so-called biodegradable plastic bags have been used in the past and most if not all were problematic, remaining as contaminants in finished compost product, the proposed rule establishes a requirement that a bag must meet a specific American Society for Testing and Materials (ASTM) D 6400-99 was developed to help prevent the claim of compostability for products that were not truly biodegradable. The Department believes that the standard will provide adequate safeguards.

N.J.A.C. 7:26A-1.4 Exemptions

31. COMMENT: The commenter stated that the Department is proposing to limit the processing of brush to four times per year with a maximum of 7,500 cubic yards. The commenter believes this to be inappropriate and unrealistic. The amount of brush a municipality or county site is able to accept should be limited to the amount of brush the municipalities pick up or residents of a community deliver to the site. Municipalities and counties need to be able to effectively process and market all the brush as well. (12) (13)

RESPONSE: The Department respectfully disagrees that the amount of brush a municipality or county site is able to accept should be limited to the amount of brush the municipalities pick up or residents of a community deliver to the site. The limit is based on expected impacts to the environment and not on whether a site is privately or publicly owned or operated.

32. COMMENT 7:26-1.4(a)3: The commenter stated that the 7,500 cubic yard limitation for processing of tree parts needs to be clarified. (4) (14) The commenter noted that the Department proposed to limit the amount of "tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts" to a maximum of 7,500 cubic yards. The commenter questioned if this 7,500 cubic yard limit reflects the total annual amount or does it reflect the maximum amount permissible for each of the four proposed two-week processing periods. (14) Furthermore, is this 7,500 cubic yard limit a total for all "tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts" on site, including those designated as processed material? (4) (14) As

written, the proposed recycling rule amendments seem to indicate that a total of 15,000 cubic yards (7,500 cubic yards unprocessed and 7,500 cubic yards processed material) will be permitted on site. Additionally, is the limitation for a one week period of time or during any one period of time? If the 7,500 cubic yard limitation applies only to the processed amount, then the amount of unprocessed tree parts should be higher. If so, then what is the higher limit for unprocessed tree parts? (4) The suggests that the combined allowable total for both unprocessed and processed material should be 7,500 cubic yards. (14)

RESPONSE: The limitation on the storage of unprocessed material is based on the amount of material the processing equipment is capable of processing within a one week period of time up to a maximum of 7,500 cubic yards. The exemption further requires that the storage of processed material shall not exceed 7,500 cubic yards. A facility operating pursuant to this exemption, therefore, could potentially have a total of 7,500 cubic yards of unprocessed material and 7,500 cubic yards of processed material stored on-site at the same time. To further clarify the storage limitations of the exemption, the Department has amended N.J.A.C. 7:26A-1.4(a)3i upon adoption to add the word "unprocessed" to the text.

33. COMMENT 7:26A-1.4(a)3: The commenter stated that the maximum limit of 7,500 cubic yards seems adequate for exempt facilities. Clarification is needed, however, with respect to the time allotted for processing material. The summary at 33 N.J.R. 4278 states that the Department has limited the amount of material on site to only that which can be processed in a week, while the regulatory text at N.J.A.C. 7:26A-1.4(a)3iv states that each processing event shall be limited to a two-week time period. (6) (19) The commenter stated that the one (1) week processing limitation, should be extended to a minimum of two (2) weeks in cases of unanticipated downtime, for example due to equipment breakdown. In such cases, the Department could require a letter from the facility operator describing the problem and estimating the time period in which the project will be completed. (6)

RESPONSE: The Department based the stockpile limitation on the amount of material that can be typically processed during one week. Since unanticipated delays may occur such as inclement weather or equipment failure, processing of the material is allowed to occur up to two (2) weeks.

34. COMMENT 7:26A-1.4(a)3: The commenter stated that the exemption at N.J.A.C. 7:26A-1.4(a)3 will not accomplish its stated goal of preventing continuous operation. (4) (16) Currently, many small operators are getting away with large operations because the amount of material they keep on site is not large enough to raise any suspicion. In reality, these smaller operators are operating their facility continuously, but due to the size of their lots or the importation of processing equipment, they are able to slide under the radar screen of the Department The result is these facilities will conduct large-scale operations covertly without having to obtain general approvals. The operations that will be punished as a result of these rules will again be those companies that are operating within the guidelines of the rules and regulations for these facilities. (16) These facilities, which in some cases may not process more material than their "exempt" counterparts but may need to store more than 7500 cubic yards of material on the site, will be forced to obtain a general approval. (4) (16) It appears that provided a facility has less than or equal to 7,500 cubic yards of processed material on site, it will be exempt from the requirement to obtain a General Approval. The Department will not be able to monitor all operations of these facilities to verify that they are only processing four times a year. Many facilities, therefore, will be able to conduct large operations covertly without having to obtain general approvals. This is presently occurring. Small businesses are getting away with large operations because the amount of material they keep on site may not be large enough to raise any suspicion. This is because they bring processing equipment from off site and/or because they operate on relatively small lots. (4)

RESPONSE: N.J.A.C. 7:26A-1.4(b)5 requires facilities operating under an exemption to notify the Department. The Department, therefore, will have a record of these facilities and has the authority to inspect them to ensure compliance with the exemption requirements. Moreover, under the County Environmental Health Act (CEHA), county health departments also have the authority to enforcement the Department's regulations.

The Department is confident that, due to the interest shown in these types of activities by competitors and affected community members, and their historical willingness to report such activities to the Department, illegally operating sites will be sufficiently monitored to identify violators. If information is received by the Department alleging noncompliance with the regulations, the Department will investigate the allegation and take enforcement action as appropriate.

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40. COMMENT 7:26A-1.4(a)3: The commenter stated that the Department should adopt the amended exemption as described in paragraph 3. (18)

RESPONSE: The Department appreciates the commenter's support and is adopting the amended exemption as proposed.

35. COMMENT 7:26A-1.4(a)3: The commenter supported that elimination of the 4" diameter size limitation for tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts. However, Class C facilities should be permitted to accept and grind tree parts regardless of their diameter. The exemption should not be limited as drafted. (5)

RESPONSE: Class C Recycling Centers can only accept Class C recyclable material by definition. This exemption is for the receipt and processing of Class B recyclable material, specifically tree parts, brush and wood chips. The limitations established in the proposed rule are meant to reflect a scale of operation that the Department has determined does not require a General Approval. Moreover, the Department believes that the limitations are necessary to ensure the exemption retains its original intent, that is to cover limited amounts of branches, limbs, and/or tree trunks processed on a periodic or seasonal basis.

36. COMMENT 7:26A-1.4(a)3: The commenter stated that the limitations at N.J.A.C. 7:26A-1.4(a)3 imposed on "exempt sites accepting brush" will negatively impact many, if not most, municipal and county sites. These public sites operate to serve their residents. Where a smaller,

highly developed municipality's exempt facility may fit nicely within these new parameters, a larger municipality or county may be unfairly burdened merely because of its physical size and need to serve its residents. These limitations on exempt brush recycling operations should be lifted, at least as they apply to publicly operated facilities. (9)

RESPONSE: The exemption to which the commenter is referring was originally intended to apply to limited amounts of material processed on a periodic basis. If a facility wants to operate on a larger scale, a General Approval is necessary, whether that facility is a municipality or not. The Department does not and cannot distinguish between private and public recycling centers, since the impacts to the public and the environment are the same from both.

37. COMMENT 7:26A-1.4(a)3: The commenter stated that the amendment to the exemption at N.J.A.C. 7:26A-1.4(a)3 regarding wood chips needs to be clarified. According to the proposal, a facility taking in wood chips that does not meet the specific criteria for an exemption (for example, 7,500 cubic yards, limited processing, etc.) would have to obtain a Class B permit. Wood chips from tree parts, however, are incorporated into the proposed change in the definition of yard trimmings, which are a Class C recyclable material. Therefore, are wood chips from tree parts classified as a Class C or Class B material? (4)

RESPONSE: Wood chips that are readily compostable meet the definition of Class C recyclable material and would be treated as such if the wood chips were being received for processing into compost. If wood chips are being received for processing into a mulch product (the assumed product from this specific exempt operation), the wood chips would be classified as a Class B recyclable material.

38. COMMENT 7:26A-1.4(a)3i: The commenter stated that the chipping and grinding equipment necessary to effectuate volume reduction of tree branches, limbs and trunks is high maintenance equipment and subject to frequent downtime.. From practical experience, one hour of operation of this equipment can require one hour of non-operational on site equipment maintenance.

Adverse weather conditions could also be encountered making a one week event impractical due to lost days for precipitation and return to normal site conditions. Since this would not allow for the generation of the volumetric capacity without the employment of inordinate amounts of supplemental equipment, the commenter suggested that the period of time for such activities be set at two weeks rather than the proposed one week, since in all likelihood, a two-week period event would result in approximately one week's actual volume reduction chipping and grinding activity. Even with use of overtime to recapture lost hours and days, two full weeks of operational throughput activity is unlikely to occur. (15)

RESPONSE: The Department based the stockpile limitation on the amount of material that can be typically processed during one week. Since unanticipated delays may occur such as inclement weather or equipment failure, processing of the material is allowed to occur up to two (2) weeks. In this case, the commenter is stating that a two week period is optimal in order to maintain the equipment. Although the two week processing period is intended to provide for the unanticipated delays described above, the two week period would provide for the scenario described above by the commenter.

39. COMMENT 7:26A-1.4(a)3i and ii: The commenter stated that there seems to be a general lack of method in the rules to establish how long product has been on site, even though the rules establish time periods of allowance. The commenter further noted that there are instances where woodchips have been piled up literally for years without being moved or removed from a nearby site, and that this nearby facility has a large pile of woodchips that have been there since before Christmas of 2001. (10)

RESPONSE: N.J.A.C. 7:26A-1.4(b)4 requires facilities operating under an exemption to submit annual tonnage reports indicating the amount of material received, stored, processed, or transferred during the previous year. Through the facility's records, the Department can determine the amount of time material has remained on-site. In addition, the exemption at N.J.A.C. 7:26A-1.4(a)3 limits the amount of material that may be stored on-site at any given time

to a maximum of 7,500 cubic yards of unprocessed material and 7,500 cubic yards of processed material. This limitation will prevent facilities from accumulating excessive amounts of material on-site.

40. COMMENT 7:26A-1.4(a)3i and ii: The commenter asked what hours of processing are allowed under this exemption. The regulations do not specify whether it should be a 1,2, or 3 shift operation. The commenter noted that a nearby facility is a multi-shift operation. (10)

RESPONSE: N.J.A.C. 7:26A-1.4(b)6 requires facilities operating pursuant to an exemption to comply with all applicable county or municipal laws or regulations. The hours a facility may operate would be determined, therefore, by local ordinances.

41. COMMENT 7:26A-1.4(a)3i and ii: The commenter asked why the exemption does not address how close to the boundaries a non-regulated operation is allowed to pile up woodchips, assuming they are for resale. (10)

RESPONSE: The Department notes that facilities operating pursuant to an exemption are required to comply with all applicable Federal, State or local laws pursuant to N.J.A.C. 7:26A-1.4(b)3 or be subject to regulation as a recycling center. The Department believes such laws adequately address the commenter's storage concerns. Additionally, the commenter has not provided the Department with any information on why the storage of woodchips for resale should be further regulated. The Department may consider an amendment to address additional storage issues in a future rulemaking and requests that the commenter provide more detailed information as to the specific problems with woodchip storage at exempt facilities.

42. COMMENT 7:26A-1.4(a)6: The commenter stated that the Department's artificial reef program activities should not be exempted from a requirement to store tires in an enclosed structure or be covered to minimize the ponding of water within the tires unless suitable drainage

voids are installed in the individual tires to preclude water capture. Outside tire storage needs to be curtailed to prevent the breeding of disease carrying insects. (15)

RESPONSE: The Department agrees with the commenter that the storage of tires prior to use in an artificial reef program should be reassessed and will consider amending the referenced exemption in a future rulemaking.

43. COMMENT 7:26A-1.4(a)12: The commenter stated that the Department should "revise the proposed text so that an agricultural site receiving leaves in biodegradable plastic bags for mulching should be allowed to incorporate these bags by shredding the bags without then requiring the removal the bags prior to mulching and incorporation into the soil." The commenter directed the Department to the supporting justification text for the proposed changes to N.J.A.C. 7:26A-1.4(a)13xiii(1) for an appropriate explanation. (15)

RESPONSE: The Department notes that the use of leaves as an amendment to farmed soils has been studied for several years. The use of paper or biodegradable plastic has not. It is also important to understand that biodegradable plastic is by definition made from material that is compostable in accordance with the American Society for Testing and Materials (ASTM) D6400-99. The test method does not predict the fate of such material in a soil environment. As such, the Department has not provided for the incorporation of biodegradable bags into soil on farms under this exemption.

44. COMMENT 7:26A-1.4(a)12: The commenter stated that the Department should not allow leaves to be delivered to farms bagged, as bagged leaves cannot be incorporated into the soil. It is a very difficult, if not impossible, operational process to remove leaves from bags at the final disposal point. (5)

RESPONSE: While the Department appreciates the concern of the commenter and in fact previously required that leaves be delivered to farms unbagged, the agricultural community has

asked the Department to reconsider this position. Those farm operations willing to provide the manpower or equipment required to debag all of the leaves delivered should not be prevented from accepting this type of material. The Department also believes that allowing farms to accept bagged material will provide municipalities with additional avenues for recycling leaves.

45. COMMENT 7:26A-1.4(a)13: The commenter stated that the Department is proposing to institute inconsistent changes to the regulations for limited exempt composting facilities for Class C recyclable material and that by seeking to encourage smaller decentralized sites, the Department is changing the focus of the regulations from facility based to person based." This will limit the amount of composting that can be achieved by any one individual or agency, now defined as "person" instead of the previous designation of "facility," to 10,000 cubic yards per year regardless of how many sites are owned. For example, the City of Vineland (with an area in excess of sixty-nine square miles) would be limited to 10,000 cubic yards under this provision despite the fact that facilities could be located miles apart. The commenter stated that the facility-based approach should be restored to the regulations to permit the desired multiple decentralized sites. The commenter suggested that the Department could propose limits on multiple facilities within a specified distance radius or it could continue to delegate such effective facility location review to the respective Solid Waste Management Plan District planning review process. (15)

RESPONSE: The Department did not intend for this change to prevent an individual or governing body from operating multiple compost sites at different locations under the exemption criteria. The wording of the regulatory text has been rephrased in this adoption to remove the reference to "any person" and define the activity exempt from General Approval as was intended. The exemption now reads: "The receipt of yard trimmings for composting where the activity meets the following criteria:"

46. COMMENT 7:26A-1.4(a)13: The commenter questioned the limitation of three acres for an exempt leaf compost site. In the case of publicly operated exempt leaf compost facilities, the Department should understand municipalities have vast variation in size and therefore leaf

compost sites will vary vastly in size. To limit all exempt leaf compost facilities to three acres is prohibitive. (9) The three acre limit will cause an unfair burden on a large town providing the same service as a small town in terms of the composting. It's a question of creating equity between large and small towns. (2) (12) (13) The commenter recommends that the three acre limitation on leaf compost operations be lifted, at least as it applied to publicly operated facilities. (9)

RESPONSE: The Department does not have statutory authority to make a public/private distinction or to treat municipalities differently depending on their size. Moreover, the three acre limit is based on expected impacts to the environment, not on whether a site is privately or publicly owned or operated. The intent of the proposed rule amendment was to change the restriction of a three-acre site previously required to a three-acre composting area. The Department has thus potentially provided an opportunity for additional sites to meet the exemption criteria. The rationale behind limiting the size of the site to three acres was addressed by the Department in the rule adoption of December 16, 1996. (See 28 N.J.R. 5366.)

47. COMMENT 7:26A-1.4(a)13: The commenter stated that the Department's limitation of no more than 10,000 cubic yards of leaves is deleterious to the publicly run facilities. When the Department reduced the maximum from 20,000 cubic yards to 10,000 cubic yards, towns were forced to use private facilities for their excess at great cost or apply for a Class C permit, also at great cost, or close their facility. The additional space/cubic yard allowance is especially important in towns that are experiencing rapid development. Rapid development means more homeowners are utilizing leaf collection putting a further burden on these facilities and on town costs. The Department should revise the limitation on leaves to a flexible amount in excess of the currently allowed 10,000 cubic yards with sufficient safeguards. (9) Rather than a limit of 10,000 cubic yards received per year, the 10,000 cubic yard maximum should be that which is on site at one time, because of the decomposition process. This would allow more leaves to be brought to a site operating as an exempt site and perhaps provide for the spring collection of leaves in some cases. (2)

RESPONSE: The limit of 10,000 cubic yards was addressed in the Department's rule adoption of December 16, 1996 (See 28 N.J.R. 5366.) and was recommended by the Composting Council in its model state regulations for permit-by-rule facilities. These model regulations were developed with input from various states including New Jersey in an attempt to establish uniformity around the country. This level of operation was agreed to be of a scale that did not require state level design approval and one at which local approvals would suffice. The Department has considered the impacts associated with these facilities, and has determined that operations at 10,000 cubic yards per year are more in line with the Department's definitions of small scale operations.

In those cases where a municipality generates more than 10,000 cubic yards per year, the commenter is correct that additional cost will be borne by the taxpayers of the municipality. However, from research done by Cook College, the cost of operating a relatively small leaf compost facility (up to 30,000 cubic yards per year) is between $4 and $6 per cubic yard. The Department is aware that the private operators in the state that the commenter mentions typically charge between $2 and $3 per cubic yard to pick up leaves from a municipal transfer area and take the leaves to their sites for composting. These lower values result from economies of scale. The Department is also aware that most farm mulching operators charge municipalities $1 or less per cubic yard delivered to the operation. As such, the Department would suspect that the costs of managing the volume of leaves in excess 10,000 cubic yards per year would be lower if a municipality sought alternatives to composting the leaves itself.

48. COMMENT 7:26A-1.4(a)13: The commenter stated that the Department should allow exempt composting activities to be performed on a maximum of five (5) acres of land, not 3 acres, provided the facility receives no more than 15,000 cubic yards of leaves per year. Taken together, these provisions would allow more towns to compost their own leaves. Most towns that compost their own leaves, receive between 10,000 to 15,000 cubic yards of leaves for processing. (5)

RESPONSE: The Department refers the commenter to the response to Comment No. 46 above. Additionally, the criteria at this section of the rules do not prevent municipalities from composting leaves. The criteria simply establish the scope of operations that the Department will allow before a Recycling Center General Approval is required. If municipalities collect more than 10,000 cubic yards on an annual basis, many options can be pursued if the time and cost of obtaining a General Approval are higher than a municipality can afford. Two compost sites meeting the exemption criteria can be established in different areas of the municipality reducing time and costs of transportation of the leaves. A transfer area can be established at the same site as the compost operation to take any leaves in excess of 10,000 cubic yards. Also, a municipality can identify farms that are willing to accept the excess material.

49. COMMENT 7:26A-1.4(a)13: The commenter stated that the Department should not limit the size of windrows or specify aisle space. Windrow size and aisle space should be determined solely by the equipment used on site.

RESPONSE: The size of windrows and aisle space established for compost operations exempt from General Approval are part of the minimum requirements specified as the approved method of composting that an operator must follow. These minimum requirements are based on presumed equipment and operational limitations and capabilities. However, as the rule allows, the Department can consider for approval other methods including different windrow dimensions and aisle widths as long as aerobic biodegradation of the yard trimmings is achieved, which is normally a factor of equipment capability and manpower availability. As such, the rule already allows for the flexibility that the commenter is requesting.

50. COMMENT 7:26A-1.4(a)13iii and iv: The commenter stated that the blanket prohibition of expedited exemption from general or limited composting facility review approvals for Green Acres property or for property listed on the Green Acres land inventory should be removed. Composting activities where end use product is used on Green Acres property or properties listed on the Green Acres land inventory is thought to be an enhancement to achieving higher quality of

park and recreational facilities by encouraging the cost effective generation and subsequent use of natural soil and vegetative amendments. Additionally, if a municipality wished to generate compost at a public park for use at an on site community garden (which would otherwise qualify as an appropriate recreation activity), it would be prohibited by the current arbitrary and capricious regulatory total ban from obtaining cost effective activity through expedited exemption approval. Similarly, this limited facility operation should be available when open public space site restoration activities could cost effectively be undertaken with on site generated compost. The commenter does not take exception, however, to the existing commercial or off recreational site material use composting permit approval regulation process. (15)

RESPONSE: The Department notes that composting yard trimmings generated on site and using the finished product on site is an exempt activity covered by N.J.A.C. 7:26A-1.4(a)2. If occurring at a park, this activity is considered part of park maintenance and as such is not prohibited. Alternatively, the receipt of yard trimmings generated off site at a park for composting whether the product is used on site or off site is considered a public works function and is prohibited by Green Acres Rules. For consistency, the Department prohibits the activity at parks whether the park is encumbered by Green Acres rules or not. Restoration activities are covered under the new exemption for composting at mined areas at N.J.A.C. 7:26A-1.4(a)18 and are not prohibited at parks under the criteria.

51. COMMENT 7:26A-1.4(a)13vi: The commenter stated that the proposed amended wording will, when applied literally, require all facilities to maintain a 500 foot buffer. Grass commingled with leaves, as is the normal occurrence in the collected leaf stream, recently caused the Department to amend the facility approvals of composting facilities. The commenter stated that the Department should have amended the appropriate regulations to acknowledge the presence of de minimis amounts of grass within normally collected leaves. Similarly, yard trimmings, fruit, nuts, pits, branches, thatch, weeds, flowers, etc are common components of the collected leaf stream. Leaves should be defined in the regulations as leaves and de minimis amounts of other naturally occurring site vegetative waste normally commingled with leaves when such are

collected. The increased buffer restriction should be applied when the facility accepts source separated grass clippings. (15)

RESPONSE: The Department respectfully disagrees with the commenter. The exemption already provides for the receipt of yard trimmings that are inclusive of the components listed by the commenter. The commenter is referred to the definitions for yard trimmings and brush at N.J.A.C. 7:26A-1.3. Moreover, the Department does not believe it necessary to define leaves. "Leaves" are a commonly understood term as defined in the dictionary. The increased buffer applies to sites that accept grass clippings. The Department does not distinguish between grass clippings received in the Fall season commingled with leaves and loads of grass clippings received in the Summer when applying the buffer requirement. Compost sites operating under the exemption that only provide a 150-foot buffer to areas of human use and occupancy must restrict the incoming materials to leaves, brush and/or wood chips.

52. COMMENT 7:26A-1.4(a)13xi and 4.1(a)14: Two commenters stated that posting of "911" rather than the local fire department telephone number should be sufficient. Under programs instituted through initiatives of the State of New Jersey, dispatch of the appropriate fire suppression agencies is accomplished through dialing "911." Posting another telephone number is, therefore, counterproductive. (15) (19)

RESPONSE: The Department is not preventing a facility from posting 911 as may be appropriate for contacting the local fire department. While the 911 system works well for land lines and known addresses, however, the commenter should be aware that calling 911 from mobile or cellular phones does not always provide an accurate location for response. The Department must consider the situation where an individual unfamiliar with an area observes a fire at a compost facility and calls in the situation with a cellular phone. The individual will not know the name of the road or the address of the compost site. The Department believes that notifying the local fire company with knowledge of the location of the compost facility, therefore, will provide a more timely response.

53. COMMENT 7:26-1.4(a)13xiii(3): The commenter stated that yard trimmings received on Saturday under the proposed regulations would be required to be placed in windrows that day due to "within the week" wording. The commenter suggested that amending the regulatory text to indicate windrow placement within one week of receipt would meet the intent and be practical. (15) (19) Thus, if yard trimming are received on a Friday or Saturday, the facility should have a week to place them in windrows rather than one day ("the" week ends on Saturday). (19)

RESPONSE: The intent of the amended rule is to require that yard trimmings be placed into windrows as soon as possible and the commenters are correct in stating that if yard trimmings are received on Saturday, the material would have to be placed into windrows by the end of the day. The Department expects ideally that windrows are formed as material is received at a site. However, knowing that this is not always possible, and for small operations not necessarily efficient, the Department has provided a longer time (one week) for windrow formation. The weekly period allows for times when either equipment availability or weather events prevent windrowing of material as it is received. The provision also allows smaller operations where leaves may be delivered over the course of a few days and then windrows are formed at the end of the week to make better use of limited resources. The Department is not inclined to provide additional flexibility as suggested by the commenter. Allowing for windrow formation after one week from the day of receipt could lead to excessive stockpiling of materials resulting in potential odor problems at a site. The commenter's dilemma regarding yard trimmings received on Saturday should be handled by establishing hours of material receipt that end sufficiently before the end of the recycling center's operating hours to ensure that any materials received can be unloaded and placed into windrows before the end of the day.

54. COMMENT 7:26A-1.4(a)14: The commenter stated that restrictions on full-scale Class C facilities should not be more stringent than those on exempt facilities. N.J.A.C. 7:26A-1.4(a)14 permits the acceptance and processing of grass up to 500 feet from any area of human use or occupancy. Class C recycling facilities, however, are not permitted to accept grass within 1000

feet of sensitive land uses. The regulations governing all types of facilities that accept grass should be amended to address this inconsistency. All facilities should accept grass and mix grass no closer than 1000 feet to an inhabited dwelling. Moreover, windrow processing and curing should take place no closer than 500 feet from the property line of a residential use. Lastly, restrictions to sensitive land uses should be dropped because sensitive land uses are not defined and simply do not relate to any environmental concern with regards to composting operations. (7)

RESPONSE: The 500-foot buffer provided for the receipt and composting of grass clippings at compost sites exempt from General Approval is set with the recognition that these sites may, according to regulation, only receive a maximum of 1,000 cubic yards of grass clippings over an entire season. The amount of grass delivered to the site averages less than 8 cubic yards per day over a typical 6-month grass season. The requirement that the compost operation be maintained with the same 500-foot buffer takes into consideration that windrow turning is accomplished with a bucket loader and not a dedicated windrow turning machine. For compost facilities that require General Approval, the 1000-foot buffer from areas where grass clippings are received to sensitive land uses was set because of an expectation of much greater volumes of grass clippings being delivered to the site. The buffer requirement for composting and curing areas at a site requiring General Approval are based on the technology to be used at the site. The Department has set a requirement of 500 feet only for sites that turn windrows a minimum of 4 times per year with a bucket loader. Sites that provide turning with specially designed equipment and monitoring of windrows for temperature and oxygen to prevent odors are allowed to establish windrows within 150 feet of sensitive land uses. Sensitive land uses are defined in the Department's "*Technical Manual for Class C Recycling Center Approvals*." The Department considers sensitive land uses to mean the same as sensitive receptor as used at N.J.A.C. 7:26A-3.2(a)10 (e.g. homes, schools, hospitals, playgrounds, etc.). The purpose of using such terms allows the Department to consider all situations where an area of human use may be impacted by the operation of a facility. It would not be appropriate to protect only residential properties.

55. COMMENT 7:26A-1.4(a)18: The commenter believed the requirements for compost operations that use the finished product on site on farmland or in mine reclamation should be the same as those found under the general compost site exemption at N.J.A.C. 7:26A-1.4(a)13. The commenter's experience with certain farmers operating compost sites has not been positive. Odor complaints and other operational problems are common at these sites. The commenter is requesting, therefore, that these sites be included in the District Solid Waste Management Plan and conform to the size restrictions for other exempt compost facilities. (19)

RESPONSE: The legislature exempted "on farm" composting from the registration requirements of the Solid Waste Management Act in 1989, relying on agricultural agents of the Natural Resource Conservation Service to provide guidance and monitor farmers that were conducting composting operations. Between 1989 and the end of 1996, the Department required such operations to be consistent with the applicable district solid waste management plan and required submittal of an engineering design for approval. With the rule change in 1996, the requirement for a design submittal was removed, but the farms were now restricted to a 10,000 cubic yard per year limit that did not allow in many cases an appropriate amount of finished compost to properly amend the soil. The Department of Agriculture (DOA) asked that the limit be removed. The DOA also adopted by rule the "Agricultural Management Practice for On-Farm Composting Operations Operating on Commercial Farms" at N.J.A.C. 2:76-2A.8 to establish appropriate composting methods that must be followed. The Department determined that with the commitment of the DOA and the Natural Resource Conservation Service, there was no longer a need to dictate a specific compost method for agricultural or horticultural lands.

56. COMMENT 7:26A-1.4(a)18: The commenter questioned if the words "on-site" in the proposed exemption for certain composting operations at mining operations from the general approval requirements, could be interpreted to include finished compost which is incorporated into a retail item stored and sold on the property? (4)

RESPONSE: The Department does not interpret the word “on-site” to include finished compost. The provision to allow composting and use of product under the proposed exemption is for reclamation of mined areas and improvement of soil conditions at farms on site where the composting occurs.

57. COMMENT 7:26A-1.4(a)18i: The commenter stated that the regulatory text should be amended to allow a site receiving material in biodegradable plastic bags to accept the bags and shred them without removing the bag fragments. The commenter directed the Department to the supporting justification text for the proposed changes to N.J.A.C. 7:26A-1.4(a)13xiii(1) for an appropriate explanation. (15)

RESPONSE: The Department agrees with the commenter that if processing equipment provides for a shredding or cutting action, yard trimmings should not have to be removed from paper and biodegradable plastic bags. The Department had anticipated that operations meeting this proposed exemption would use low technology methods and did not foresee the possibility of the use of more sophisticated equipment. However, as the possibility does exist, the wording of the regulatory text has been modified to allow for this option.

58. COMMENT 7:26A-1.4(a)19: The commenter agreed with the addition of an exemption for a leaf transfer facility but believed an exemption should also be established for grass transfer operations. The commenter’s county has demonstrated through a pilot program that a grass transfer site could be operated successfully and without odor complaints. The commenter also questioned the need for an “effective visual buffer” if the facility is located in a remote area. (19)

RESPONSE: The Department’s regulations currently contain an exemption for the transfer of grass provided the transfer takes place at a convenience center (see N.J.A.C. 7:26-1.1(a)5). The convenience center exemption was developed through the pilot program to which the commenter refers and codified into regulation in 1996. Convenience centers provide containers for residents

to drop off both their own solid waste and recyclable material including grass clippings with vehicles bearing general registration plates.

In answer to the last part of the commenter's comment, visual buffers are required to screen the transfer operation from "adjacent" residential, commercial and recreational areas. If an operation is in a remote area with no such areas next to the operation, a visual screen is not required.

59. COMMENT 7:26A-1.4(a)19: The commenter stated that the use of the term "person" rather than the term "facility" unduly restricts the transfer of leaves when multiple sites are under the ownership of a single entity. Literal enforcement would reduce the volumetric limitation of site under the same ownership even if such sites are remote from each other. The commenter also stated that "facilities holding solid waste facility permits under N.J.A.C. Chapter 26 should also be exempt from receiving approvals if meeting stated criteria by this section." (15)

RESPONSE: The Department did not intend for this change to prevent an individual or governing body from operating multiple transfer sites at different locations under the exemption criteria. The regulatory text has been modified to clearly define the activity exempt from General Approval. The commenter's position that solid waste facilities holding permits under N.J.A.C. 7:26 should be allowed to conduct activities exempt under N.J.A.C. 7:26A-1.4 is not clearly addressed in the Solid Waste Rules. However, the Department does require at N.J.A.C. 7:26A-1.4(b)7 that any holder of a General Approval issued in accordance with N.J.A.C. 7:26A-3 that intends to conduct an activity exempt from General Approval is subject to the District Sold Waste Management Plan Amendment provisions of N.J.A.C. 7:26-6.11 and the General Approval modification requirements at N.J.A.C. 7:26A-3.10. As a parallel to this requirement, the Department would require a permittee holding a Solid Waste Facility Permit to similarly request modification to the district solid waste management plan and the Solid Waste Facility Permit. The underlying basis for this requirement is the preemption of local zoning and planning ordinances that is afforded any recycling center or solid waste facility that is included in a solid waste management plan and is approved through a Recycling Center General Approval or Solid Waste

Facility Permit. Any activity occurring at a site covered by the approval is subject only to that approval. If one or more exempt activities were simply allowed without review and approval, the impacts to the environment of these activities in combination with those from the approved activity would go unchecked. It is understood that when the Department exempts categories of facilities from the provisions of the Solid Waste Management Act and its design approval and environmental impact approval regulations, the impacts created by these facilities are addressed at the local level. If the activities occur at a site subject to approval by the Department, this local assessment is preempted.

60. COMMENT 7:26A-1.4(a)19: The commenter stated that the Department should amend the exemption at N.J.A.C. 7:26A-1.4(a)19 to delete the visual screen buffer requirement for leaf transfer operations which are located in remote areas of a municipality or county. Their great distance and isolation from areas of human occupancy obviate the need for a visual screen buffer. It would serve no useful purpose. (6)

RESPONSE: The exemption criteria require that a visual screen be established for adjacent residential, recreational, and/or commercial land uses. The situation described by the commenter appears to be one in which a visual screen would not be required since none of the listed land uses are adjacent to the transfer area. As such, Department does not believe it is necessary to delete the requirement.

61. COMMENT 7:26A-1.4(a)19i: The commenter stated that the proposed text does not adequately address the performance standards to be attained and that "outside activity visual impact of loading and unloading might be justified, more so in a residential district. The commenter asked if buildings, on site equipment and employee's vehicles to be screened even in an industrial zone where generally this type of ancillary use is routinely permitted without the need to erect a barrier? The specific performance standards should be stated; otherwise this will result in varying and inconsistent standards being enforced without necessarily protecting persons and property. Barriers of vegetation should be encouraged in certain situations, but in urban industrial

areas opaque fencing may be most appropriate. Lastly, the method of screening should be consistent with local municipal requirements unless the existing landscaping in adjacent sites is clearly different from the municipal requirements. (15)

RESPONSE: The rule already limits the type of adjacent areas to be screened to residential, recreational and/or commercial. No screen is required for adjacent industrial land uses. The rule further only requires the perimeter of the leaf receipt and transfer activity area to be separated with a visual screen. Unless the buildings, on site equipment or employee vehicles to which the commenter refers are located in the transfer area, these things would not need to be screened. The type of screen as the commenter states should be consistent with municipal requirements. Since such operations are subject to local zoning and site plan ordinances, the host municipality will establish the type of screen and any other locally required features for the operation.

N.J.A.C. 7:26A-2 Fees

62. COMMENT 7:26A-2.1: The commenter stated that the Department should charge recycling facilities only a one time application fee and not an annual renewable fee. If an annual fee must be charged, it should be reduced dramatically from the proposed levels.

RESPONSE: The Department is statutorily required to charge fees which fully cover services rendered. The fees proposed for readoption in this subchapter were based upon the Department's review and analysis of the types of reviews it conducts regarding the approval of recycling facilities as well as the number of hours associated with the completion of those reviews and the costs involved. With respect to the annual renewal fee, this fee covers a number of services including but not limited to approval of facility modifications and transfers of ownership, and facility compliance inspections (which are currently performed on a monthly frequency).

63. COMMENT: The commenter stated that the Department did a very thorough job in documenting its costs for licensing and also on notices of violation, but did not do a cost analysis

of how the Department compares with other states. For example, to register as a licensed transporter to transport solid waste is free in New Hampshire, Vermont is $40.00, and Pennsylvania is $250. The State of New Jersey is $2,422, almost ten times the amount it costs in the State of Pennsylvania. The Department should do a cost analysis to see how the fees compare with other states. (1)

RESPONSE: The Department is statutorily mandated to adopt a fee schedule that reasonably reflects the duration or complexity of the services rendered (see N.J.S.A. 13:1E-18). Consequently, the fee determination is unique to New Jersey. The statute does not provide for adjusting the fees based on a comparison with fees imposed by other states.

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64. COMMENT 7:26A-3.2: The commenter stated the provisions of this section require the applicant to specify detailed information on the maximum amount of material to be received, transferred, and processed, as well as "a description of the design capacity of the recycling center setting forth the number and types of vehicles bringing material to the recycling center. . ." Additionally, as noted in draft General Approval permits and finalized General Approval permits issued by the Department, the Department also specifies the maximum allowable linear feet of windrow permissible at a compost facility. The commenter stated that the Department's method of determining maximum allowable linear feet of windrow is unfounded, inconsistent, and not based on regulation. The basis for calculating linear feet of windrow is often inconsistent with the volume of materials that may be accepted on-site, the total number of vehicles that can be safely and efficiently handled, and the size of the facility in terms of square feet or acres.

While the commenter appreciated the need for the Department to regulate and control permitted activities, the commenter stated that a simpler method of control must be established. Specifying limitations on volume received, vehicles handled, and linear feet, only leads to inconsistency and confusion, particularly when one accounts for the assumptions built into any of the numbers. In the spirit of environmental protection and community safety, the commenter suggested that

control be based on vehicle capacity, to assure no degradation of traffic patterns, and site layout and available processing equipment. Total permissible linear feet of windrow should be based on available space (that is to say, site layout or acreage) and ability to process the material, not some arbitrary calculation with unfounded assumptions.

The commenter also stated that facilities should be permitted to maximize their investment in property and equipment by utilizing all of the available space for recycling activities, assuming they can do so in an environmentally sound fashion. Maximizing available capacity at existing sites provides the added benefit of minimizing the need to permit additional facilities. (18)

RESPONSE: N.J.A.C.7:26A-3.5(e) establishes that a General Approval will set limitations on a recycling center operation. Historically, this has taken the form of limiting the volumetric capacities of processed and unprocessed materials stockpiles on a site at any given time and setting a daily tonnage limit for the receipt of recyclable materials. To be consistent with this past practice, the Department places similar limits in General Approvals for composting operations considering windrows to be stockpiles of unprocessed material. With given height and width dimensions based on equipment to be used at a site, the volume of the windrows is directly proportional to the total length of all windrows at a site. The Department finds that limiting the total length provides an operator with the flexibility to increase aisle spaces and position windrows on site where it makes operational sense. Dictating that windrow layout conform strictly to a site plan would be overly burdensome. It is also important to recognize that the volume of windrowed material at a site must be consistent with any limits set by a district solid waste management plan. Typically, compost facilities were and are included in district plans with annual volumetric capacities because of the seasonal nature of yard waste generation. The Department uses the annual volume set for leaves as the maximum volume that can be on a site at any given time because this is typically all that is needed. The peak amount of material that is received at a compost site occurs during a 6 to 8 week window in the fall of each year when the majority of fallen leaves are collected. As these leaves decompose through the composting process, volume becomes available for yard trimmings received in the following spring and

summer. In most cases, the limits set coincide with available area on a given site, but in some instances, a county may limit the amount of material that a site can accept based on other factors such as the volume of truck traffic and other impacts.

65. COMMENT 7:26A-3.2(a)9: The commenter stated that the regulations should be amended to delete any limit to the size (height and/or width) or the location of a finished compost pile. The size of the finished product pile has no impact on the environment. Its aerobic composting process is complete and the product is ready for distribution. (5)

RESPONSE: The regulations do not limit the size or location of finished product stockpiles. The rules at N.J.A.C. 7:26A-3.2(a)9 simply require that the stockpile with dimensions be shown on the site plan. Approval of this plan then restricts the operator to the dimensions and location shown. The rule further allows an applicant to identify those areas of the site that will be used alternatively for processed and unprocessed materials storage providing the option to locate a finished product stockpile on the site where it makes operational sense.

66. COMMENT 7:26A-3.4(c): The commenter noted the addition of the following, “the wording of the performance bond or letter of credit must be identical to the wording specified in (d) or (e) below respectively."” The commenter believes this is overly restrictive, intrusive, and that requiring identical wording may greatly decrease the potential of a regulated facility from securing such a document. While the overall objective or need for a performance bond or letter of credit must be specified, it is overly burdensome to specify exact language. A performance bond and letter of credit are legal and financial documents. Interested parties must be allowed latitude in making such arrangements. The commenter requests, therefore, that this requirement be removed and replaced with suggested or example language, while still stating the objective of the bond or letter. (17)

RESPONSE: The wording of these documents is taken from actual financial instruments issued by banks and surety companies. The Department believes that standardization of the wording of

these documents is generally accepted practice in the financial market and serves to protect the principal, beneficiary, and the bank or surety company from errors, omissions or misunderstandings should the financial instrument need to be drawn upon or otherwise executed.

67. COMMENT 7:26A-3.4(c): The commenter stated that governmental entities should not be required to post performance bonds and/or letters of credit to guarantee performance of recycling centers. Local public procurement laws do not require such guarantees for interlocal contracts between governmental agencies. Governmental entities are generally not able to disavow their obligations in the same manner as private firms facing financial pressures who seek to employ bankruptcy as a shield. Most government agencies operating recycling centers have direct or indirect taxing powers. All have the ability to charge fees for service provided. Since the underlying risks are inherently different and the ability to obtain injunctive relief on governmental agencies is not subject to a private sector location dilemma or incorporation veil, the Department should recognize the situational reality and not require private sector guarantee instruments from public sector applicants. (15)

RESPONSE: Financial assurance will not always be required of recycling centers, whether publicly or privately owned. The regulations at N.J.A.C. 7:26A-3.4(c) state that the Department "may" require the financial assurance after performing an evaluation of the criteria listed in the rule. The criteria include such factors as the enforcement history of the facility, the types and amounts of materials managed at the site and the stability of end-markets for the recycled materials. Whether the recycling center is publicly or privately owned has little or no bearing on the evaluation of these criteria. Therefore, the Department believes that recycling centers owned by public entities should be evaluated to determine whether financial assurance is necessary using the same criteria that applies to privately owned recycling centers.

However, when the Department developed the language for Performance Bonds and Letters of Credit, publicly owned recycling centers were not addressed. The Department agrees that the guarantee instruments specified in the rule (performance bond or letter of credit) may not be

appropriate for public sector applicants. To address this, the Department has added language to the rule to clarify that the identification of specific dedicated funds can be used by public facilities to demonstrate the ability to fund the proper closure of the facility.

68. COMMENT 7:26A-3.7: The commenter agreed with the requirement that copies of the application be submitted to the solid waste district in which the facility is located. (19)

RESPONSE: The Department appreciates the commenter's support.

69. COMMENT 7:26A-3.7(a): The commenter stated that this subsection should be modified to eliminate the receipt of Class B materials under a Limited Class B Recycling Center Approval pending the issuance of a General Class B Recycling Center Approval. The stated purpose of the proposed amendment is to allow limited approvals only for use of Class B Recyclable at a particular site. The Department claims that these provisions were never intended to be used as a precursor to obtaining a general approval, however, the Department provides no support for this assertion. In fact, the history of the program and the commenter's experience establishes otherwise. The proposed rule change would inappropriately restrict the availability of a limited approval for the importation and recycling of Class B materials for use in capping brownfields or other site remediation projects to the detriment of the environment and contrary to the recycling and beneficial use objectives of the New Jersey solid waste laws. The New Jersey Legislature has identified capping as the preferred remedy for historic contamination sites in both the Brownfields law and the Solid Waste law.

The commenter further stated that the proposed change does not accomplish its goal; sites with Class B Recyclables onsite may under the new rule develop a recycling center under a limited approval and permitting the establishment of a general approval recycling center at the same location in the future. The elimination of the right to receive Class B Recyclable materials at a limited approval facility pending full review and approval of same would be injurious to the environment of the State of New Jersey by preventing the use of materials that can subsidize

capping costs and redevelopment of Brownfield sites that otherwise would not get capped or re-developed. More often than not, the time and expense involved with acquiring a General Class B Recycling Center approval would prevent the use of recyclable materials from being used to redevelop appropriate Brownfield sites, and would prevent some redevelopment at sites where the capping costs make the economic aspects of redevelopment unfavorable for lending and financial institutions. (20)

RESPONSE: The Department agrees with the commenter that in certain cases a facility may need to accept material under a limited approval. As stated in the comment, a facility may need to accept Class B recyclable materials to close a landfill. In some cases, the closure process may be performed in a short enough period of time that the limited approval would be more appropriate than a general approval. Therefore, the Department is adopting N.J.A.C. 7:26A-3.7(a) without the proposed amendments. The Department notes that even though limited approvals may be issued for the receipt of Class B materials, facilities will not be allowed to apply for a limited approval as a precursor to obtaining a general approval. The purpose of the limited approval continues to be for projects of a short-term duration.

70. COMMENT 7:26A-3.8: The commenter noted that many of the regulations dealing with compost windrows, curing piles, cross sectional views, dimensions and details of grass curing areas are being eliminated. The commenter supported the removal of many of the detailed submission requirements removed. The commenter stated, however, that undefined requirements often lead to misinterpretations, which in turn develop into internal requirements not intended by the regulations. The commenter is especially concerned that the regulations do not address how a site capacity is derived and permitted. Such was not explicitly regulated in the past and seems to be even less regulated in the proposed adoption. In the past, this had led to Department policy positions that seem to focus on protecting the Department's ability to regulate from afar as opposed to protecting the environment or promoting recycling. Policymaking by the Department which is not based on clear direction from the regulations is unduly restrictive. The commenter believes that regulations should state how the approved capacity of a site is determined and that

should be determined based on available machinery and site layout. Furthermore, the commenter recommends that the Department allow the site layout and available equipment to determine acceptable capacity. As long as the facility does not exceed the maximum windrow capacity shown on the approved site plan, and provided it is not causing undue environmental harm, the facility should be allowed to construct windrows as conditions dictate. (17)

RESPONSE: The removal of these requirements does not negate the need to provide the information when submitting an application for Recycling Center General Approval. N.J.A.C. 7:26A-3.2(a) already requires the information in general terms. The purpose of N.J.A.C. 7:26A-3.18, when adopted in December 1996, was to provide guidance to applicants for General Approvals for Class C Recycling Centers that would normally be found in a Technical Manual for application preparation that the Department must publish in accordance with the Environmental Management Accountability Plan, specifically N.J.S.A. 13:1D-114, (sometimes referred to as the "Doria legislation"). With the Technical Manual now available, the specificity required in applications is no longer needed at the rule.

The Department does not understand the commenter's request to modify the rules to clearly indicate how the Department determines the capacity of a site. The capacity of a recycling center is defined by an applicant, not the Department. The Department evaluates an application which provides equipment capacities, volume reduction factors from processing, man power, and area constraints to determine if the anticipated volume of recyclable materials to be received daily and over time can be accommodated. If found acceptable and if the same information has been reviewed and approved in the district solid waste management plan, the Department approves the capacity requested.

71. COMMENT 7:26A-3.10: The commenter stated that the procedures for modifying an existing Class B general approval for movement of stockpiles and the addition of recyclable items to the unprocessed and processed material list of a facility are extremely cumbersome and costly.

RESPONSE: The procedures at N.J.A.C. 7:26A-3.10 require only that a facility submit information documenting any changes from the information submitted in its original application. Such information is necessary for the Department to determine what effect, if any, the modification will have on public health and the environment. The Department does not charge a fee for the review of modification requests for Class B approvals. If a facility requests a modification to the location of material stockpiles, however, a revised site plan prepared by a professional engineer must be submitted with the request. The preparation of the revised site plan will be an expense for the facility. In such instance, however, a revised site plan is necessary for the Department to assess the effect on the environment of the facility and the surrounding properties.

72. COMMENT 7:26A-3.10: The commenter stated that the Department should implement a permit modification system that creates parameters for modification reporting and automatic approval. Such a system would enhance economic efficiency, cut Departmental backlogs, and focus on prevention of environmental harm. At a minimum, the regulations should be modified to state that an applicant may make requests for minor modifications in writing by certified mail/return receipt requested to the Department. The Department would then have 90 days to respond with an approval, denial, or amended approval. If no response is received within 90 days, the modification should be deemed approved. While many facility modifications have little, if any, negative environmental impact, they have a severe economic impact on the facility if approval is delayed. (5)

RESPONSE: The General Approval modification requirements at N.J.A.C. 7:26A-3.10 already contain a timeframe for the Department to react to a request for modification. The regulation requires the Department to notify the holder of the General Approval of any deficiencies in the information submitted within 30 days of receipt of the request for modification. Upon determining that the submitted information is complete, the Department will approve or deny the request and notify the holder in writing. This process typically takes less than 90 days. The holder of the General Approval cannot institute the modification until written approval is issued.

73. COMMENT 7:26-3.16: The commenter stated that many public facilities for composting brush and/or leaves currently successfully operate under the exemption. Facilities which are operating within the language of the exemption and similar new public facilities, should be allowed to continue to operate without the need of a Class B or Class C Department approval. The Department has taken some action which would indicate its desire to require all of the publicly operated facilities for leaves and/or brush to obtain Class B or Class C general operating approvals. Such permitting requirements would be cost prohibitive for most municipalities who are merely trying to provide a public service to their residents; and, imposing a permit requirement on these municipal facilities may lead to the closing of some much need public sites. Merely because a municipality may encompass a large area and, therefore, generate a large volume of compostable raw product, that larger municipality should have the same ability (as a smaller municipality) to operate an exempt facility for its residents. If such a policy exists within the Department to bring these exempt facilities into the permitted category, that policy should be abandoned. (9)

RESPONSE: Facilities accepting brush and leaves for composting under exemption from General Approval are not affected by the proposed amendments to these rules. If a municipality operates a compost facility that qualifies for exemption from General Approval the operation will remain exempt under the renewed regulation. Additionally, if a municipality conducts any other recycling operation that was exempt from General Approval and has followed the notification procedures outlined in the rules, the activity will remain exempt from General Approval. The only possible exception would be those municipalities that qualified for exemption to accept and process tree branches, tree limbs and tree trunks less than 4 inches in diameter and brush and because of the proposed limitations will no longer meet the criteria. While this proposed amendment may have the effect of causing the need for some previously exempt operations to obtain General Approval, the Department is not singling out public recycling centers. On the contrary, the Department does not distinguish between private and public recycling centers when developing regulations and would suggest that any operator of a previously exempt operation simply modify its practices in

an effort to qualify under the proposed exemption criteria. The commenter's last issue concerning the size of a municipality and the ability of the municipality to operate a compost facility that qualifies for exemption is addressed in response to Comment No. 46. Again, the Department can not exempt a recycling operation merely because it is municipally owned and operated.

74. COMMENT 7:26A-3.16: The commenter stated that this section should be retained. While the Department stated that the filing requirements for existing recycling centers which receive, store, process or transfer Class C recyclable material were proposed for repeal because they were no longer necessary, the Department will have issued general approvals to all existing facilities. At the time of proposal, the Department had not issued approvals or denials to all existing facilities. Retaining this section protects existing facilities that had complied with existing regulations, laws, and policies of the State. Some of these facilities may not have received final permits due to circumstances beyond their control. Furthermore, since this section allows the Department to grant or deny a general approval, there is no reason not to keep the provision. (7)

RESPONSE: As stated in the proposal, the Department does not believe that N.J.A.C. 7:26A-3.16 will be necessary at the time that this rule is operative. Any owners/operators of compost facilities that were operating under solid waste facility permits or exemptions from solid waste facility permits prior to the rule changes proposed in May of 1996 and promulgated in December of 1996 have had more than five years to complete the General Approval application process. The Department believes that this is more than sufficient time, especially since a great majority of the facilities have already completed the process.

75. COMMENT 7:26A-3.18: The commenter noted that the detailed submission requirements referencing the handling of grass are being eliminated. The commenter stated that the elimination of submission requirements will only lead to a Department policy determination that results in a regulations that the public was not afforded an opportunity to comment on. The commenter submitted a facility specific example illustrating its position. The commenter requested, therefore, that language be included stating that the facility may store and process grass as best serves that

facility, as long as odors are contained and the public is not affected. (17)

RESPONSE: The narrative description of grass clipping handling is still required by N.J.A.C. 7:26A-3.2(a)14. The specifics that should be included in the description as discussed in the response to Comment No. 54 are part of the "*Technical Manual for Class C Recycling Center Approvals*" available by contacting the Department's Division of Solid and Hazardous Waste at (609) 984-6880 or downloading the document from this Division's website at www.state.nj.us/dep/dshw/resource/techman.htm. Design and operating criteria for sites accepting and processing grass clippings are at N.J.A.C. 7:26A-4.1 and 4.5.

N.J.A.C. 7:26-4

76. COMMENT 7:26A-4.1(a): The commenter stated that existing Class B facilities should be grandfathered from the proposed additional design and operation requirements set forth in this section and that "the location of utilities, traffic studies, 25 foot buffer requirements are extremely costly to the industry and not relevant to these operations." If exemption is out of the question, the commenter asked that any new standards set forth in these rules should be required at the time that a facility is applying for a permit renewal of modification, not immediately upon adoption of the above rules. (4) (16)

RESPONSE: The Department respectfully disagrees that existing Class B facilities should be exempt from the new operational requirements. The Department agrees, however, that existing facilities should be allowed time to come into compliance with the new requirements. Therefore, the Department has delayed the operative date of these amendments by six months. The Department believes six months is sufficient time to come into compliance.

77. COMMENT: The commenter stated that there should be no restrictions on the length of time that screening residual material can remain on site. In certain cases, this material is marketable as a product and is available for distribution. (5)

RESPONSE 7:26A-4.1(a)2: Materials separated by screening of finished compost should only be contaminants. However, the Department recognizes that some amount of product will adhere to contaminants and agrees that additional screening may generate additional compost product. Ultimately, the material remaining is residue by definition in that it is not yard trimmings and it is not finished compost. As such, the residue must be removed from the site within 6 months as required by N.J.A.C. 7:26A-4.1(a)2. The commenter's contention that the material is marketable as a product in certain cases has not been observed by the Department. The Department would expect that the residue would include tennis and golf balls, glass, metal, wood, stone and other non-compostable materials that are typically observed at composting operations. This material is defined as solid waste and cannot be marketed as a product without approval from the Department.

78. COMMENT 7:26A-4.1(a)13: The commenter stated that the summary text for violation of N.J.A.C. 7:26A-4.1(a)13 found in the penalty table at N.J.A.C. 7:26-5.4 is inappropriate when it strays into a discussion of performance based action. The text should be limited to discussion of constructing and maintaining suitable compacted and/or paved equipment and vehicle travel surfaces as required by the Department as conditions of facility approval. Moreover, the text is written in a manner which suggests that a penalty is assessed after the problem presents itself rather than on inspection when it is determined that the appropriate improvements are not or were not adequately constructed. (15)

RESPONSE: The Department respectfully disagrees with the commenter. The areas of the recycling center subject to vehicular usage and compaction/paving requirements should be addressed in the General Approval application and site plan submission. Enforcement staff will inspect these areas consistent with the General Approval and site plan and ensure that these areas are properly maintained.

79. COMMENT 7:26A-4.1(a)4: The commenter stated that unacceptable waste not in a roll-off container should not in itself be a violation. The Department should allow unacceptable or

prohibited waste to be separated from vegetative waste and placed into a roll-off container (open or closed top) by the end of each day of operation, or at most within 24 hours. (5)

RESPONSE: Contaminants removed from incoming recyclable materials are residue. N.J.A.C. 7:26A-4.1(a)4 requires that residues be stored separately from recyclable materials and in a manner that prevents run-off, leakage or seepage from the residue storage area into, on or around the soil of the residue storage area. Applications for general approval identify the storage location or locations for residue on the site plan and describe the method of contaminant removal and handling. Once approved, the location and method of storage are established by the general approval. Waste or residue storage violations are contingent on the facility's compliance with the control measures identified or referenced in the General or Limited Approval. Since there are no timing provisions in the rule, placement of residues in any other location or storage in any other manner is a violation. The Department does not believe these requirements are overly burdensome and would suggest that an operator consider fully the need for proper storage of residues when designing a facility.

80. COMMENT 7:26A-4.1(a)7: The commenter stated that "unlike municipal development regulations, the Department has not chosen to publish detailed design standards specifying either the specific standards to be used or met, or in the alternative, the attainment of the goals sought." Overly broad terms without guidance will result in varying and inconsistent standards being enforced without necessarily protecting persons and property. If the Department wishes to preempt additional local regulations, it should state such overtly and not leave its intent unstated. Since most conflicts occur over facility or activity approval or explanations, the Department should utilize a similar review standard to that contained in the New Jersey Municipal Land Law (N.J.S.A. 40:55D-1 et seq.) during its application approval process. The State should be seeking to incorporate reasonable middle ground between local parochial interests and uniform recycling industry standards. (15)

RESPONSE: The Department believes the standards it will apply to recycling center approval applications is adequately set forth in the Solid Waste Management Act and these rules, and that these provisions adequately incorporate considerations of local interests and the need for uniformity. The preemption of local zoning by the Solid Waste Management Act's planning process is well-established and remains unchanged by these rules.

81. COMMENT 7:26A-4.1(a)7: The commenter stated that the phrase "county, municipal, and other local" should not be deleted as proposed from the requirement that a recycling center shall be operated in conformance with all applicable Federal and State laws and regulations. While the Department may want to clarify its pre-emptive authority over county, municipal and other local ordinances and regulations, it should not preclude those levels of government from exercising any additional requirements to the extent that such regulations do not conflict with the State's directives. (8)

RESPONSE: The preemption of local zoning by the Solid Waste Management Act's planning process is well-established and remains unchanged by these rules. The degree to which local governments may exercise additional authority over the facilities covered by these regulations is a matter of State law. Thus, to the degree local regulation is permissible, it is due to an applicable State law and thus would continue to be permitted under these rules.

82. COMMENT 7:26A-4.1(a)8: The commenter stated that there should be no violation issued for litter control at a facility unless the litter migrates off-site. Unless litter migrates off-site, however, there is no environmental harm. Litter is an inherent part of the operations and all facilities should have litter control measures in place. Compost facilities should be regulated for litter to the same degree and in the same fashion as any other property. (5)

RESPONSE: N.J.A.C. 7:26A-4.1(a)8 requires that all recycling centers be operated in such a manner that the recycling center is maintained free of litter and debris. As such, if litter is not regularly removed from the site, the operation is not in compliance with the regulation. The

Department does not agree that litter is an inherent part of operations. A litter control plan must meet the goal of maintaining the site free of litter to ensure that litter does not migrate off site to adjacent properties. Further, accumulations of litter can lead to vector attraction and propagation. By definition, litter is solid waste that has been improperly discarded. The Department recognizes that a certain amount of contaminants will arrive with incoming loads of recyclable materials. However, through appropriate incoming materials handling and inspection, these contaminants can be removed from the incoming material in a manner that does not cause litter. Lastly, unless an egregious situation develops whereby the extent of litter on the site makes the offsite migration inevitable, the Department would not normally issue a Notice of Violation for the presence of litter that is being effectively contained within the site and is actively being addressed by facility personnel.

83. COMMENT 7:26A-4.1(a)10: The commenter stated that the proposal mandates the use of a traffic analysis designed for the State Highway System in New Jersey to address the level of service within a one-half mile radius of the recycling center. The commenter also stated that since this body of regulations was not specifically designed for application on municipal and county roadways, its effect is likely to be unknown. While levels of service definitions from these New Jersey Department of Transportation regulations might be utilized, if found appropriate, the Department apparently did not study the design implications and their effect both on the facilities and the area transportation roadways. The commenter questioned whether the Department has recognized traffic engineers capable of conducting the appropriate traffic generation reviews. Past transfer station and materials handling facility capacity modification approvals issued by the Department indicate that the Department lacks the necessary expertise to review traffic studies. (15)

RESPONSE: The rule requires that traffic associated with the operation of the recycling center not result in an unacceptable decrease in the existing level of service of any major intersection or public roadway within a one-half mile radius of the recycling center. Level of service for any type of roadway and intersection is defined by the Federal Highway Administration and represents the

average motorist's perceived quality of conditions on a roadway or at an intersection. Mathematically, the Department can easily determine when a decrease in level of service will occur using prescribed worksheets and with the aid of a nationally recognized highway capacity computer program. However, when determining what is unacceptable, the Department must look to outside sources. The New Jersey Highway Access Management Code at N.J.A.C. 16:47 provides the parameters to use in New Jersey to determine if a decrease will be unacceptable and when existing conditions should not be exacerbated with additional vehicles. While the State Department of Transportation uses these rules to determine if new access to State roads should be granted, the measures are equally applicable to county and municipal roads. The Department does not need the assistance of traffic engineers to conduct such evaluations.

84. COMMENT 7:26A-4.1(a)10: The commenter stated that the "penalty description text for N.J.A.C. 7:26A-4.1(a)10 recycling center traffic is inconsistent with the cited regulation text at proposed N.J.A.C. 7:26A-4.1(a)10." As written, it will be confusing to field enforcement staff and create unintended expectations from lay public readers as to the intent and ability to regulate traffic. This issue is appropriately handled by the approval, disapproval or modification of the recycling center facility approval and Operation and Maintenance (O&M) plan and not by penalty assessment. The commenter notes that only the traffic emanating from the recycling facility and vehicles which are under the direct control of the owner/operator can be actually routed in a manner suggested indirectly by the penalty text, not the balance of the traffic or the public roadway facility's operation itself (for example, inappropriately timed public traffic signals) that may result in degradation of service. The Department proposes to hold the owner/operators of recycling centers incorrectly accountable for actions beyond their control. The commenter believes these difficulties may in part be traceable directly to Department policies flexibility routinely granting approvals in the past allowing facilities to aggregate daily facility throughput capacity limits into weekly averages. While this may work for processing recyclables, the Department did not generally appropriately evaluate the resulting increased traffic impacts. (15)

RESPONSE: The summary text for each violation is not intended to be a word for word

restatement of the regulatory provision. They are merely intended as an aid to the regulated community. Additionally, the Department believes that the recycling center operator can affect traffic impacts in the general area of the facility. Hours of operation, entry/exit delays, and equipment breakdown issues can easily contribute to local traffic congestion.

85. COMMENT 7:26A-4.1(a)11: The commenter stated that the Department must define what is meant by an "effective visual screen buffer." A visual screen buffer may mean a berm or screen created by trees or bushes. The commenter noted that the proposed readoption did not provide a definition, and that in its experience, undefined requirements often lead to misinterpretation and subsequent enforcement issues. (17)

RESPONSE: An effective visual screen buffer is an object or group of objects that reduce the potential visual impact of activities occurring at a site. This requirement has been in place for composting facilities since 1987, and the Department has never found the need to define it further. The screen could take the form of a berm or a group of trees or shrubs placed such that operations are substantially hidden from view as the commenter suggests. It could also take the form of a wooden stockade fence or concrete wall.

86. COMMENT 7:26A-4.1(a)11: The commenter stated that the "proposed text does not adequately address the performance standard to be attained. Outside activity visual impact of storage, loading and unloading might be justified under certain conditions, especially in a residential district." The commenter questioned whether buildings, on site equipment and employee's vehicles need to be screened even in industrial zones where generally this type of ancillary use is routinely permitted without the need to erect barriers. The specific performance standards should be stated, otherwise this will result in varying and inconsistent standards being enforced without necessarily protecting persons and property. Barriers of vegetation should be encouraged in certain situations, but in urban industrial areas, opaque fencing may be the most appropriate depending upon the purpose. (15)

RESPONSE: The Department refers the commenter to the response to Comment No. 85 above. Additionally, the screen is only required to separate the operations at the site from adjacent residential, commercial and/or other sensitive land uses (i.e. parks, schools, hospitals, etc.). Operations could take the form of loaders placing material in a tubgrinder, erecting unprocessed and processed materials stockpiles, i.e. activities at the site associated with the receipt, storage, processing and transfer of recyclable materials. As such, the rule does not require a screen for permanent structures or employee parking areas.

87. COMMENT 7:26A-4.1(a)11: The commenter stated that the penalty assessment for 7:26A-4.1(a)11 visual screen is inappropriate as the accompanying regulatory text proposed at N.J.A.C. 7:26A-4.1(a)11 does not adequately address the performance standards to be attained. The commenter believes this will result in varying and inconsistent standards being enforced without necessarily achieving the laudable goal of protecting adjacent persons and property. Moreover, as written, the proposed text should be stricken and replaced with general covenants invoking a penalty for failure to construct and maintain required environmental mitigation physical site improvements as required by the Department as conditions of facility approval. (15)

RESPONSE: The Department respectfully disagrees with the commenter. The type and nature of the visual screen should be addressed in the facility's General Approval application and site plan submission. Enforcement staff inspect the visual screen consistent with the General Approval and site plan. Should an existing screen become an issue, an approval modification should be made to address the problem.

88. COMMENT 7:26A-4.1(a)13: The commenter noted that N.J.A.C. 7:26A-4.1(a)13 contains a new provision which requires areas subject to vehicular usage to be suitably compacted and where necessary paved. If the Department's goal is to minimize soil and dust on public roads, the commenter believes the term "vehicular usage" should be limited to areas where delivery trucks or vehicles operate, not to areas where on-site vehicles that do not routinely travel public roads operate. (17)

RESPONSE: The goal of this requirement is to minimize dust that may be generated from an operation. For this reason, the requirement is for all areas of the site that are subject to vehicular use to be compacted and where necessary paved. The requirement to prevent tracking of mud onto public roads is already addressed by N.J.A.C. 7:26A-4.1(a)8.

89. COMMENT 7:26A-4.1(a)13: The commenter stated that violations should not be issued for dust on site. Dust is an inherent part of a facility's operations. Unless the dust migrates off-site, there is no environmental or human health impact. Moreover all facilities must have dust control measures in place. (5)

RESPONSE: N.J.A.C. 7:26A-4.5(a)6 recodified at N.J.A.C. 7:26A-4.1(a)13 requires that areas of any recycling center subject to vehicular usage must be suitably compacted and where necessary paved to provide sufficient support for vehicles, prevent tracking of soil onto public roadways and minimize generation of dust. Applications for General Approval for Class C Recycling Centers are also required to address plans for dust control at the site because the Department recognizes that dust is inherent with composting operations. Therefore, dust control violations are contingent on the facility's compliance with the control measures identified or referenced in the General or Limited Approval. If an operator has complied with the surfacing requirement and is following the approved dust control plan, there would be no violation of the conditions of the General Approval. If however, the amount of dust migrating offsite is of sufficient concentration and duration to be injurious to human health or the environment, it could be classified as air pollution as defined at N.J.A.C. 7:27 and the operator could be cited accordingly.

90. COMMENT 7:26A-4.4: Two commenters stated that it is inappropriate to measure compact fluorescent lamps in feet, and asked that the Department specify how a compact fluorescent bulb is to be quantified.(19, 15) Another commenter stated that the reporting of lamps in feet is inconsistent with manifesting requirements where feet is not an acceptable unit. The commenter

also feels that the reporting of mercury devices by individual count is impractical if the Department expects facilities to open and remove the contents of every container to count the number of thermometers or ampoules. This requirement would significantly increase the amount of handling required and increase the associated risk. While the commenter agreed that reporting mercury in tons or cubic yards is meaningless, reporting in pounds or gallons would be a more reasonable compromise. (21)

RESPONSE: The Department confirms that lamps which are not tubular (i.e., compact or bulb-like) may be counted individually. Moreover, the Department recognizes that it is unwise to open containers of materials; it is the responsibility of the generator to make a reasonably accurate count of the mercury-containing devices placed in the container, and note the number on the label or indicate it on the bill of lading. The Department hopes that bulbs and mercury-containing devices will be recycled rather than disposed of, and that a manifest will not be needed. The Department acknowledges, however, that some shipments may need to be manifested. In these cases, therefore, the Department will accept the reporting of lamps and mercury containing devices in pounds or gallons. The Department has modified the rule upon adoption, therefore, to clarify that it is acceptable to report lamps which are not tubular by individual count, and to report lamps or mercury containing devices in pounds or gallons for shipments which must be manifested.

91. COMMENT 7:26A-4.5: The commenter stated the Department should clarify item (a)6 to indicate that this provision applies when grass is intended to be processed. Facilities that accept grass only to collect it for the purpose of transferring the grass to an approved offsite facility rather than process it on site should be required to establish an acceptable location 1000 feet from areas of human use or occupancy. Grass transfer operations at which grass is received, placed in a covered container, and removed from site within 48 hours will not have odors associated with grass composting operations and, therefore, should not be subject to these stringent buffer requirements. In addition, the commenter stated that the Department should clarify N.J.A.C. 7:26A-4.5(a)6 to read “If the incoming material contains more than deminimus amounts of grass.”

(19)

RESPONSE: The Department notes that the purpose of the buffer requirement is to help to prevent off-site odors associated with the unloading of grass clippings at a site. As such, the buffer requirement is applicable to all sites that accept grass clippings.

92. COMMENT 7:26A-4.5(a)6: The commenter noted that the Department is proposing a 1,000 foot buffer between areas that receive material containing grass from any areas of human use or occupancy. The proposed exemption at 7:26A-1.4(a)vi states, however, that "the windrow composting area shall not exceed three acres. In addition, composting windrows shall terminate no closer than 50 feet from any property line and 150 feet from the property line of any area of human use or occupancy, or if grass clippings are received, the composting windrows shall terminate a minimum of 500 feet from the property line of any area of human use or occupancy." The commenter questioned why exempt recycling facilities should be treated differently than permitted facilities and recommended that the Department establish a 500 foot set back for material containing grass clippings from the property line of any area of human use or occupancy for both permitted and exempt facilities. The non-exempted regulated facilities are inspected much more frequently than exempt facilities and are under much more scrutiny. Therefore, they should not be restricted more than exempted facilities. (17)

RESPONSE: The buffer requirement has been applied to compost facilities for more than 10 years and was included in the previous rule at N.J.A.C.7:26A-4.5(a)15v. The 500-foot buffer provided for the receipt and composting of grass clippings at compost sites exempt from General Approval is set with the recognition that these sites may, according to regulation, only receive a maximum of 1,000 cubic yards of grass clippings over an entire season. The amount of grass delivered to the site averages less than 8 cubic yards per day over a typical 6-month grass season. The requirement that the compost windrow operation be maintained with the same 500-foot buffer takes into consideration that windrow turning is accomplished with a bucket loader and not a dedicated windrow turning machine. For compost facilities where a General Approval is

required, the 1000-foot buffer from areas where grass clippings are received to sensitive land uses was set because of an expectation of much greater volumes of grass clippings being delivered to the site. Further, after receipt and initial mixing with semi-decomposed leaves, the material can be established in windrows with only a 150-foot buffer to areas of human use and occupancy. This reduced buffer is allowed because these sites provide turning with specially designed equipment and monitor windrows for temperature and oxygen to help prevent odors.

93. COMMENT 7:26A-4.5(a)6: The commenter stated that yard trimmings can and are likely to have small quantities of grass commingled with the other vegetative material. Rather than subject the material to the 1000 foot buffer for de minimis amounts of grass (which is normally found in vegetative waste streams), the Department should modify the text to indicate that acceptance of source separated grass clippings triggers the 1000 foot operational buffer. (15)

RESPONSE: The Department established the 1000-foot buffer to off-loading areas for loads of yard trimmings containing grass clippings. If an applicant indicates that small amounts of grass clippings will be accepted with loads of leaves, the buffer would apply. It is not reasonable to establish a percentage limit that triggers the buffer requirement, because it is impossible to measure relative percentages of materials in enclosed vehicles. It should also be understood that the Department allows up to 1% by volume of any load to be contaminants before a material is not considered to be source separated. As such, if some amount of grass clippings less than 1% by volume in a load of leaves is received at a facility in a leaf handling area, no violation would occur.

94. COMMENT 7:26A-4.5(a)6: The commenter stated that the Department is proposing a new requirement for recycling centers which receive, store, process or transfer Class C recyclable materials to maintain a 1000 foot buffer between areas that receive material containing grass from any areas of human use or occupancy. The commenter noted that the preamble to the proposed rule stated that this new restriction is necessary to "help prevent odor problems." Based on its experience, the commenter believes the new restriction is not only unnecessary, but would result

in a severe negative economic impact in that at any one point, up to one-third of incoming recyclable material may be grass. The commenter further notes that its two facilities have operated for over 24 months without a single verified odor complaint from a neighbor. Historically, both facilities have operated with only minor, sporadic odor problems. The commenter notes that the Department currently has several existing mechanisms to control odors, including requiring facilities to develop an odor control plan, as well as existing air pollution control standards that prohibit operating facilities from emitting odors. The commenter stated that rather than institute a mandatory 1000 foot buffer, the Department should require recycling facilities to operate without causing off-site odor, and to develop and implement odor control provisions. The commenter further suggested that the Department adopt similar language for odor control as proposed in N.J.A.C. 7:26A-3.2(a)20 for noise control. In N.J.A.C. 7:26A-3.2(a)20, the Department requires that an applicant demonstrate the ability to meet noise control rules, rather than specify a specific noise buffer zone. The commenter also noted the proposed language contained in N.J.A.C. 7:26A-3.18(a)7, with requires compliance with New Jersey Air Pollution Control Regulations regarding odor. The commenter believes this requirements should be enforced, rather than a mandatory buffer. At the very least, existing facilities that are operating without odor problems should be grandfathered and not be required to meet a new odor buffer zone limit. (18)

RESPONSE: The requirement for a 1000-foot buffer from grass clippings receiving areas to areas of human use and occupancy is not a new requirement. Composting facilities accepting grass have been subject to this requirement for over ten years, first in guideline form and then in rule form starting in December 1996. Over this time compost sites accepting grass clippings at this distance have been found in violation of the Air Pollution Code at N.J.A.C. 7:27 because of odors associated with the grass clippings being received. Accordingly, if the Department were to consider a change in the buffer requirement it would be to increase the distance, not remove the requirement.

The Department has also required the 1000-foot buffer at sites receiving and transferring grass clippings by policy as defined in the *"Technical Manual for Class C Recycling Center Approvals*" available by contacting the Department's Division of Solid and Hazardous Waste at (609) 984-6880 or by downloading it from this Division's web site at www.state.nj.us/dep/dshw/resource/techman.htm. Allowing existing operations to continue without having to meet the requirement would be contrary to the policy goals.

With respect to the commenter's suggestion that the Department adopt an odor control provision similar to that which it uses for noise control, the Department's regulations already contain such a provision. The Department refers the commenter to N.J.A.C. 7:26A-3.18(a)2xiv recodified as N.J.A.C. 7:26A-3.18(a)7 in this adoption.

95. COMMENT 7:26A-4.5(a)7ii: The commenter stated that the penalty assessment text at N.J.A.C. 7:26A-4.5(a)7ii involving composting surfaces is inconsistent with the regulatory text at proposed N.J.A.C. 7:26A-4.5(a)7ii. The text should be appropriately changed to prohibit on site ponding except where so designed and approved by the Department and off site runoff under normal operating conditions and storm events of twenty-five years or less. (15)

RESPONSE: The Department has amended the text in the penalty table upon adoption to indicate that the composting surface must be maintained to prevent ponding and/or runoff. The Department notes, however, that N.J.A.C. 7:26A-4.5(a)7ii requires the active composting surface to be sloped sufficiently to prevent ponding of liquids and not so steep as to allow surface runoff to directly enter any surface waters. The amount of rainfall should have no impact on the performance of a properly constructed composting pad to prevent ponding of liquids. Additionally, stormwater basins would not be considered surface waters by definition. The Department defines leachate as any precipitation that comes in contact with materials at a composting site. As such, the rule already focuses on leachate from composting operations.

96. COMMENT 7:26A-4.5(a)7ii: The commenter stated that the text should be amended to

prohibit on site ponding except where so designated and approved by the Department and off site under normal operating conditions and storm events of twenty-five years or less. Torrential downpours in excess of design standards are unavoidable. Stormwater control often makes use of basins to retain or detain liquids. The regulations should focus on leachate from composting operations and not interfere with clean stormwater management. (15)

RESPONSE: N.J.A.C. 7:26A-4.5(a)7ii requires the active composting surface to be sloped sufficiently to prevent ponding of liquids and not so steep as to allow surface runoff to directly enter any surface waters. The amount of rainfall should have no impact on the performance of a properly constructed composting pad to prevent ponding of liquids. Additionally, stormwater basins would not be considered surface waters by definition. The Department defines leachate as any precipitation that comes in contact with materials at a composting site. As such, the rule already focuses on leachate from composting operations.

97. COMMENT 7:26A-4.5(a)7ii: The commenter stated that the Department is imposing a new requirement for "active composting surfaces." The section requires "an improved surface, such as compacted clay, gap-graded crushed aggregate, asphalt or other such surface that can withstand heavy equipment use." The commenter is concerned that the Department would potentially require a re-surfacing of existing compost sites. This could potentially result in significant costs to modify existing facilities, having a significant negative economic impact. The commenter noted that vehicles currently used at its compost facilities are designed for the existing surfaces. Mandating re-surfacing for sites that do not currently have a problem with vehicle movement is unnecessary and burdensome. The commenter also noted that the section requires that "the surface shall be sloped to prevent ponding of liquids. . ." The commenter agreed that surfaces should be sloped to <u>minimize</u> ponding. Preventing ponding, particularly after storm periods is not practical. The commenter suggested that the word "prevent," therefore, be replaced with "minimize." (18)

RESPONSE: The requirement at N.J.A.C. 7:26A-4.5(a)7ii is not a new requirement. N.J.A.C. 7:26A-4.5 was modified to list requirements common to all recycling centers that receive, store process and transfer Class C Recyclable Materials first and follow these with those requirements specific to sites where materials are composted. The requirement for an improved surface has already been applied to all compost facilities that were operating prior to December 1996. Any existing site would already be resurfaced as needed to comply with this requirement, so any economic impact has already occurred. The Department has required that the surface of compost sites be sloped to prevent ponding for over 15 years. Ponding can easily be prevented if the ground surface has been improved, sufficiently compacted and graded with a slope between 5 and 10%. Slopes less than 5% tend to allow standing water and slopes greater than 10% cause unwanted surface erosion.

98. COMMENT 7:26A-4.5(a)7ii: The commenter stated that conditions on site at the time of inspection should not be used to asses whether a facility is in compliance with the ponding requirements. The timing of precipitation or the movement of material may temporarily create an unevenness in the surface. Such temporary unevenness is unrelated to environmental harm or efficient operation. (5)

RESPONSE: N.J.A.C. 7:26A-4.5(a)7, recodified at 4.5(a)7ii. requires that the active composting surface be an improved surface that can withstand heavy equipment use and that it be sloped to prevent the ponding of liquids. With this requirement, the Department would not expect the creation of an unevenness from the movement of material on the site. Temporary depressions could occur due to settling of underlying soils, but this situation can be addressed with addition of crushed aggregate and compaction of the area. If the surface is being altered by equipment movement, then the surface does not meet the requirement. Also, if ponding is observed, it may also be an indication that the composting surface has not been properly sloped**.**

When considering whether a given situation warrants the issuance of a formal Notice of Violation (NOV), the Department has and will continue to take into consideration forces and events outside

the control of the operator. NOVs, for instance, are typically not issued for ponding at leaf compost sites when the inspection occurs in close proximity to significant precipitation. However, if ponding is the result of a failure to maintain an appropriate grade to the site, or is persistent in nature, then an NOV would be issued. The Department believes that it has shown an appropriate amount of discretion on this issue in the past, and will continue to do so on a case by case basis.

99. COMMENT: 7:26A-4.5(a)7iii: The commenter stated that its county and most of New Jersey is almost always under a water alert. Mandating that water be used to moisten the leaves before windrowing is a wasteful use of this precious commodity. Moreover, compost facility operators have learned by experience that even in the worst drought conditions, such as this past Fall, dry windrow leaves will decompose but at a slower rate. The self contained moisture and small amount of rain or snow provide sufficient moisture for decomposition, particularly windrows that contain grass with its high moisture content. The commenter, therefore, recommended that the Department eliminate the need to moisten yard trimmings prior to windrow formation. (17)

RESPONSE: The Department appreciates the commenter's concern with respect to the use of water during drought situations. The Department does not mandate, however, that potable water be used to moisten leaves. The requirement is that dry yard trimmings be moistened without oversaturating. The Department has always encouraged the use of non-potable sources of water such as wastewater treatment plant effluent and other appropriate recycled waste waters and stormwater retained on site for the moisture requirement. Contrary to the commenter's opinion, without some amount of water, decomposition does not occur. Microorganisms survive only in films of moisture around the particles that are undergoing decomposition.

100. COMMENT 7:26A-4.5(a)15: The commenter stated that windrow size should be limited only by the restrictions and capacities of the turning equipment used on site, if at all. Acceptable composting practices address safety and output concerns by maintaining aerobic conditions,

certain temperatures, moisture content and oxygen levels. Maintenance of the proper temperature and sufficient oxygenation are the basic considerations which should guide operations. The regulations already contain provisions governing frequency of windrow turning, and monitoring the aerobic state of the windrows. Proper turning of the windrows cannot be achieved if the height of the windrows is beyond equipment capacity. (5)

RESPONSE: Windrow size is limited by the turning equipment used on site if an operator uses an intermediate level of technology as defined at N.J.A.C. 7:26A-4.5(a)15.iv.(3). The Department establishes specific maximum windrow dimensions under other levels of technology in keeping with acceptable composting practices as described in "*New Jersey's Manual on Composting Leaves & Management of Other Yard Trimmings*." It should be understood that the purpose of these definitions are only used to set appropriate buffer distances from operations to sensitive land uses and establish what specific yard trimmings can be accepted at a proposed facility. The actual method and windrow dimensions are not set by the regulations. An applicant/operator can develop any method of composting as long as aerobic decomposition of the materials is achieved.

101. COMMENT 7:26A-4.5(a)20: The commenter stated that while the requirements in this section are reasonable, they are concerned with the burdensome "product monitoring and sampling plan" the Department is imposing in recently issued draft and final General Approvals. The proposed regulations reference an approved Quality Assurance/Quality Control (QA/QC) plan, however, recently issued draft and final General Approvals require extensive sampling and analysis, including samples for every 1,000 cubic yards of compost generated. The commenter believes this requirement is costly and unnecessary, given the strict management of incoming material. Moreover, the existing regulation at N.J.A.C. 7:26A-4.5(a)15vii requires that "finished compost shall be tested once each year . . ." A once per year sample is more reasonable, based on the required management and control of incoming material. Also, the purpose of the QA/QC plan should be to verify that no contaminants are included in the final compost. Rigorous control of incoming material is the primary control; once per year sampling is after-the-fact verification. The commenter requests, therefore, that the Department retain the existing requirement of once per

year sampling. (18)

RESPONSE: The Department believes the commenter meant to refer to the requirements at N.J.A.C. 7:26-4.5(a)15 not N.J.A.C. 7:26A-4.5(a)20. Quality Assurance/Quality Control Plans are required as a component of an Operation and Maintenance Manual for testing the composting process and product at recycling centers composting material other than yard trimmings. They are not required for yard trimmings compost sites. The Department only requires once-per-year testing of finished compost at compost facilities accepting yard trimmings in accordance with N.J.A.C. 7:26A-4.5(a)15vii (proposed re-numbering to 4.5(a)7viii.) as the commenter is suggesting. To appropriately test the average quality of any material, a sampling plan must be devised that accounts for the variation in the percentage of constituents of concern in each sample. It would be inappropriate to assume that a single sample of product would be representative of the whole when testing for heavy metals, pH, man made inerts, soluble salts and stability factors. The regulations do not establish the specifics of sampling plans for compost facilities that are required to sample and analyze finished compost. It is not possible to set a specific volume of material from which a representative sample should be drawn. The number of samples that must be drawn from a population are determined through various statistical tools. Generally, more samples are required where the material being tested is not homogenous relative to the concentration of the parameter of interest, i.e., where one expects that the concentration of a parameter in a sample will deviate greatly from the average concentration of the parameter in the material as a whole, the greater the sample number. As sampling plans for compost sites have been formulated by the Department over the past 2 years, the Department has set, as a starting point, a requirement that one sample be taken for every 1,000 cubic yards of compost under the premise that distribution of heavy metals in compost is relatively uniform. Additionally, depending on the amount of compost expected to be produced, the Department has further allowed compositing of up to 10 of these samples such that the sample sent to a laboratory for analysis represents 10,000 cubic yards in an effort to reduce analytical costs. However, as results from facilities are received, the Department will evaluate the initial premise of uniform

distribution. If the basis for reduced sample numbers is found incorrect, the number of samples required will be increased.

102. COMMENT 7:26A-4.6(a): The commenter asked that the final sentence of this paragraph be revised as follows from "Universal waste, when not recycled or designed for recycling under the provisions of this chapter must be handled as hazardous waste." to "Universal waste, when disposed of must be handled as hazardous waste." The Federal regulations do not specify that universal waste must be recycled nor do they prohibit shipping universal waste to a destination facility for disposal as universal waste. Only upon disposal at a destination facility are the hazardous waste rules required to be followed. (21)

RESPONSE: The Department agrees with the commenter that the regulatory text at N.J.A.C. 7:26A-4.6(a) is misleading. The Department intended the referenced provision to prohibit universal wastes which are not recycled or intended to be recycled from being handled by Class D recycling centers since by definition, a Class D recycling facility can only accept Class D recyclable materials. Universal wastes which are not recycled, therefore, are not Class D recyclable materials. The Department has amended the regulatory text upon adoption to clarify same.

103. COMMENT 7:26A-4.6(e) and 7.7: The commenter stated that the labeling requirements of these two sections are inconsistent. Facilities requirements at N.J.A.C. 7:26A-4.6(e) require labeling for both Class D and universal waste while transporter requirements at N.J.A.C. 7:26A-7.7 require only labeling as universal waste. In either case, these labeling requirements appear overly stringent as the incorporated Federal rules at 40 C.F.R. 273.14 and 34 do not require the words "Universal waste." Universal wastes are Class D's so listing both is redundant. General names like: recycled oil paint, mercury devices, or thermometers should be sufficient to identify the material. (20)

RESPONSE: The Department acknowledges that the labeling requirements are dissimilar but

respectfully disagrees that they are inconsistent. As the commenter noted, the labeling requirements at N.J.A.C. 7:26A-4.6(e) are for Class D recycling centers. Only universal wastes which are recycled are classified as both Class D recyclable materials and universal wastes. Therefore, it is appropriate to require these facilities to label the containers with both designations. The Department notes that the labeling requirements at N.J.A.C. 7:26A-7.7, however, are not transporter requirements, but generator and handler requirements for State-only universal wastes. It would not be appropriate for a generator or handler to label a container of universal waste as a Class D recyclable material, since the generator or handler may not be sending the universal waste for recycling. Lastly, the Department respectfully disagrees with the commenter's statement that both labeling requirements appear overly stringent. The Department believes it prudent to accurately describe the waste so that employees, transporters, processors, and Department inspectors will have the information they need to adequately perform their job in an environmentally safe manner or respond to any release of the material. Moreover, the Department believes that many generators will store their universal wastes in the same areas as they use to store other hazardous wastes. The additional labeling requirements will, therefore, help them keep track of the contents of the containers and their regulatory status.

104. COMMENT 7:26A-4.8(b): The commenter stated that this subsection adds numerous additional design and operation requirements for Class B Recycling facilities which handle petroleum contaminated soil. The Department justifies the additions with the statement "petroleum contaminated soil differs from other Class B materials in its impact on the environment. Therefore, the addition of design criteria specific to these types of Class B facilities will ensure that such diverse environmental impacts are fully addressed." The commenter stated that no further information is provided to support the assertion, and that the additional requirements appear to have no connection to the type of environmental risks associated with petroleum contaminated soils. The commenter also stated that many of the requirements appear to be borrowed from design standards developed for preventing and responding to releases of <u>liquid</u> hazardous waste. The commenter noted that the contaminated soils allowed for processing at a particular facility contain very low levels of petroleum constituents in a soil matrix. Leaks

and release do not, therefore, occur. The typical facility, due to the large volumes of materials, operates outdoors. Standard methods for preventing storm water runoff from material storage piles (e.g., for lime or coal) are adequate to prevent the release of the soil or its petroleum constituents into the ground or surface waters of the state. While additional precautions such as impermeable surfaces for storage and staging areas are appropriate, the proposed regulations impose additional requirements with little correlation to the nature and character of petroleum contaminated soils and the various types of processing used to recycle them into building products. Many require additional fire fighting tools and procedures. The commenter stated that unless saturated, petroleum contaminated soils pose as little danger of causing or contributing to fires as regular soil. Those facilities which process the soil through burning or cooking the soil, utilize fuels and techniques which could pose a fire hazard different than that posed by other Class B Recyclables. The commenter's process, however, involves no use of heat or fuels. Many of the requirements mirror spill response or emergency contingency planning provisions typical of hazardous chemical or waste storage for liquids. The commenter stated that there is limited potential for soils contaminated with petroleum constituents in parts per million to induce explosions, be released or spilled, in a way which would require evacuation plans or quick response by local emergency response crews. The soils contain spilled materials; they have limited potential to cause additional spills and releases.

The commenter also stated that N.J.A.C. 7:26A-4.8(b)9 makes no sense. It states that facility closure must assume that the soils are hazardous waste unless they are not hazardous waste. Yet, by definition, a Class B Recyclable petroleum contaminated soil is not a hazardous waste. If it were, the facility would require a Treatment, Storage, or Disposal Facility permit to process the soil (20).

RESPONSE: The Department respectfully disagrees with the commenter. Petroleum contaminated soil can pose a threat to human health and the environment. Run-off from petroleum contaminated soil can contaminate surface or groundwater and potentially contaminate drinking water wells. The commenter stated that the contaminated soils received by Class B

recycling centers contain very low levels of petroleum constituents. However, Class B recycling centers are approved to accept soils with relatively high levels petroleum contamination and must therefore be designed in a manner able to handle soils with higher levels of contamination. The additional operating requirements proposed in the rulemaking are designed to address the potential threats posed by petroleum contaminated soil. The requirements were based on those required for Class D used oil facilities, however, they were modified to be applicable to facilities processing petroleum contaminated soil.

The proposed operating requirement at NJAC 7:26A-4.8(b)2 referenced by the commenter, states that the additional firefighting equipment shall be maintained on-site, "unless the hazards posed by the petroleum contaminated soil handled at the facility could require a particular kind of equipment specified". If a facility can show that any of the firefighting equipment is not necessary, then it would not be required at the site.

The closure requirements at NJAC 7:26-4.8(b)9 do not just address removal of contaminated soil as the commenter suggests. The closure requirement also applies to all of the equipment and the areas where petroleum contaminated soil was stored. Upon closure of the facility, the owner shall ensure that all of the areas where petroleum contaminated soil was managed is not hazardous waste and shall ensure proper disposal or cleanup of those areas.

Subchapter 7

105. COMMENT 7:26-7.1(a): The commenter supports the Department's proposal to adopt the Federal Universal Waste Rule, 40 C.F.R. 273, because it will promote national uniformity and help develop national recycling infrastructure (11)

RESPONSE: The Department appreciates the commenter's support. The Department recognizes that a nationally coherent program simplifies compliance by operators and may support a national recycling infrastructure.

106. COMMENT 7:26A-7.1(c): The commenter opposed the addition of the entire category of consumer electronics to the State's Universal Waste Rule because the entire category of consumer electronics does not meet Federal and State definitions of hazardous waste. Furthermore, the commenter is concerned that the proposal establishes a presumption that all consumer electronics are universal wastes, resulting in additional regulatory requirements on non-hazardous consumer electronics that are currently being successfully diverted from the waste stream, possibly as scrap metal. The commenter recommended the definition of consumer electronics be amended to define consumer electronics as those that may fail Federal and State hazardous waste testing procedures due to the presence of either mercury-containing lamps or cathode ray tubes. (11)

RESPONSE: The definition of universal waste at N.J.A.C. 7:26G-4.2 states that "Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of N.J.A.C. 7:26A-7. . ." Therefore, only those consumer electronics which would first be classified as hazardous waste may be managed as universal wastes. Moreover, the clarification suggested by the commenter would not be sufficient to capture all of the consumer electronics that would be regulated as hazardous waste. In addition to the presence of mercury-containing lamps or cathode ray tubes, consumer electronics may also contain batteries or other sources of toxic metals. Lastly, the Department does not intend to divert non-hazardous consumer electronics from scrap metal processing to Class D facilities. The Department recognizes, however, that household consumer electronics are not uniformly collected for scrap metal. Those non-hazardous consumer electronics in the universal waste system may be ultimately diverted to the scrap metal recycling industry.

107. COMMENT 7:26A-7.1(f): The commenter stated that the meaning of the phrase "Universal wastes are also Class D recyclable materials when designed for recycling in New Jersey" is unclear. The commenter asked if when recycling occurs outside of New Jersey, are the materials considered Class D materials. The commenter also questioned if universal wastes are by

definition Class D materials, does this then imply that if recycling occurs outside New Jersey this material is not universal waste. The commenter suggested that the above noted phrase be removed. (21)

RESPONSE: While most universal waste are also Class D recyclable materials, and most Class D recyclable materials are universal wastes, neither is always true. The Department notes that technically there is one universal waste that is rarely recycled, that being pesticides destined for return to manufacturers for destruction. These are not Class D recyclable materials, since they are not recycled. Also, there are Class D recyclable materials that are not universal wastes, such as antifreeze. As the commenter notes, there is also the possibility that materials would move out of state, in which case they would be Class D recyclable materials and/or universal wastes while in New Jersey, but would not be Class D recyclable materials and may not be universal wastes in another state as that State's recycling laws would apply.

108. COMMENT 7:26A-7.2(a)3i: The commenter urges the Department to exempt from regulation scenarios where possible reuse of material could occur to avoid regulation of reusable products. The commenter notes that under the proposal, actions that constitute "discard" or "disposal" trigger universal waste coverage for consumer electronics. These terms, however can be difficult to ascertain. Moreover, it appears that abandonment by the first user is determinative of universal waste status, not the collector's plans for possible reuse. The commenter urges the state to clarify that products that still possess reuse value (if collected for that purpose) are not included in the universal waste rule and that universal waste status should not be triggered until a determination that reuse is not warranted or feasible occurs. The commenter recommended that the terms "discard" or "disposal" could be defined as actions to send materials off-site specifically for reclamation and/or recycling.

RESPONSE: The Department confirms that the regulatory status of a <u>used</u> consumer electronic device is determined by the generator. A used consumer electronic device becomes a waste the date on which the generator discards it or designates it for disposal (e.g., sends the device for

reclamation or disposal). This interpretation is consistent with how the USEPA determines the regulatory status of other types of universal waste , for example, batteries, mercury thermometers, and lamps. Although the USEPA does not currently regulate consumer electronics as universal waste, as an authorized state for the Federal RCRA program, the Department must be consistent with and as stringent as the overall Federal program. Therefore, the regulatory status of a used consumer electronic device may only be determined by the generator, while any universal waste handler may determine the regulatory status of the consumer electronic if the device is unused. (An unused consumer electronic device becomes a waste on the date the *universal waste handler* decides to discard it or designate it for disposal.) Once a generator discards or designates for disposal a used consumer electronic device, the device may be classified as a solid waste, hazardous waste, universal waste, recyclable material or a combination thereof, depending on where the device is destined and whether or not it would be classified as a hazardous waste. For example, a consumer electronic device which is classified as a hazardous waste must be handled as a fully regulated hazardous waste in accordance with the hazardous waste regulations, or handled as a universal waste in accordance with the reduced requirements of the universal waste regulations. A consumer electronic device which is not classified as a hazardous waste, would not be a universal waste, but would be a Class D recyclable material in New Jersey when sent for recycling. Lastly, the Department clarifies that it considers "discarded" to mean "sent for reclamation, or disposal" and "designated for disposal to mean "sent for disposal."

Miscellaneous Class B Recycling Facility Comments

109. COMMENT: The commenter stated that the Department's resources would be better spent regulating more environmental damaging industries such as local junk yards rather than continuing its extreme vigilance with respect to Class B recycling facilities. There are numerous junk yards, solid waste transfer stations and gas stations that are less than 25 feet from residences and other sensitive areas. Why is the placement of inert material stockpiles strictly monitored but the daily operations of a junkyard are not? (4)

RESPONSE: The Department currently regulates the impacts of junkyards through a consolidated regulatory approach, under a number of regulatory programs. (For example, the Department has issued storm water permits for a number of these operations.) The Department is also aware, however, that although Class B recycling centers are approved to accept only source separated materials, unless the Department maintains a vigorous compliance monitoring program for this universe, significant problems can also occur. Unfortunately history bears testimony to fires occurring at Class B facilities. With respect to the operational requirement of a twenty-five (25) foot buffer between material stockpiles and a facility's property line, such a buffer is necessary to provide an access lane around the perimeter of the facility. This access lane ensures that emergency vehicles, such as fire trucks, etc., can safely maneuver throughout the entire facility.

110. COMMENT: The commenter stated that the length and diameter of brush and logs accepted should be based on the capacities and size restrictions of the equipment that will be used at the facility. A maximum size or capacity for the grinder utilized at the facility should be established. Accepting large logs and brush poses no threat to the environment. It makes an improved end-product and further reduces a municipality's costs, saves landfill space and recognizes the reality of the collection stream before it reaches the Class C facility. (5)

RESPONSE: The Department typically sets size limitations on recyclable materials to be received at a recycling center based on equipment limitations. The Department may also set a limit based on a restriction set in a District Solid Waste Management Plan that includes the proposed facility.

Miscellaneous Class C Recycling Facility Comments

111. COMMENT: The commenter stated that the proposed readoption with amendments does nothing to address the concerns of compost facilities. They do not recognize the environmental benefits of composting, nor take into account that the materials, if not recycled, would simply make their way to landfills and incinerators at best. At worst, they may be illegally dumped. (5)

RESPONSE: Rules concerning the construction and operation of compost facilities are mostly unchanged from existing rules. Without specific concerns, the Department cannot completely address the commenter's issues. The Department clearly does, however, recognize the environmental benefits of composting. The fact that the Department has adopted regulations which allow for the authorization of these activities with a less costly and time consuming permitting process than for solid waste facilities demonstrates both the Department's desire to get these facilities up and running, as well as determination that the management of the source separated materials involved in recycling do not pose as great an environmental threat as receiving non source separated solid waste. Thus, recycling centers are not required to obtain Department approval of an Environmental Health Impact Statement (EHIS) prior to commencing operations as solid waste facilities are.

The Department's objective in overseeing the permitting and compliance of recycling centers is to balance the need for the beneficial services that recycling centers provide with the need to protect the environment at large and specifically the quality of life in the community where the recycling center is located. Recycling centers that operate outside the limitations and controls of the regulations and any site-specific approval, greatly increase the chance of significant impacts occurring at a recycling center. These impacts, including offsite odors, stormwater, traffic, and fires, have proven to be a reality at sites not operated in compliance with applicable regulations and approvals, and even at some sites that have complied with their approvals. The Department believes that the current regulatory mix of exemptions, including those identified in this regulatory proposal, and approvals, including the County Solid Waste Management Plan process, where applicable, strikes the appropriate balance between the need to inexpensively and efficiently authorize recycling centers of all types, and the need to limit the impacts of recycling centers by establishing appropriate operational parameters via the approval or exemption process, and then compelling compliance with that authority via the inspection and enforcement process.

112. COMMENT: The commenter stated that all prohibitions against site features (for example, loading ramps), improvements (for example, office trailers), and material processing (for example,

sand mixing) which are unrelated to the composting process should be deleted from the regulations and associated site plan. In other words, any activities that would be unregulated if they occurred outside a composting facility should not be regulated by the Department when occurring at a compost facility (for example, mixing of sand, construction of a ramp). Blending and screening is an inherent part of the composting process. It improves the quality of the product, enhancing a facility's operations. Further, the sand which is blended with the compost is not solid waste and its importation poses no threat to the environment. Blending it with compost should not be cited as a violation. (5)

RESPONSE: The General Approval application requirements at N.J.A.C. 7:26A-3.2(a)9 require the submittal of a site plan that depicts all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials. As such, if any area or structure at a site is to be used in support of the receipt and processing of recyclable materials, it must be shown. Composting is only one of many processing steps conducted at a Class C Recycling Center. The Department would agree that any activities and the building and equipment that may be dedicated to those activities that the Department does not regulate under these rules should not be shown on a site plan being used to apply for recycling center general approval. Nor should these activities be part of the General Approval. Unfortunately, the only way to provide for this separation is to prevent these activities from occurring on the site that is the subject of the Recycling Center General Approval. The commenter is reminded that the Department preempts local ordinance only in the field of waste management and this preemption only applies to any materials and activities that are included in a district solid waste management plan and in a General Approval. Any other activities and the site where they occur are subject to municipal site plan approval.

The Department is uncertain as to the commenter's intent regarding sand and blending it with finished compost. The commenter says that the Department should not regulate blending since the sand is not solid waste, but the commenter also says that blending is an inherent part of the composting process. If the product enhancement step is one of the many processing steps that the

recyclable material must go through to generate a product from the recycling center, the activity and material and equipment involved must be included in the district solid waste management plan and the approval for the site. If the blending operation is conducted at another site, it is subject to local site plan approval. Thus, an operator may modify its site to separate this soil blending operation from the activities covered under a General Approval and reduce the foot print of the recycling center.

113. COMMENT: The commenter stated that the regulations should be amended to place no limit on the size of a screening residual pile. Screening residual materials are not solid waste. This material is eventually fully utilized by being further cured or separated and used in final products. Any plastics are placed in roll-off containers for shipment to a landfill. (5)

RESPONSE: The regulations do not limit the size of screening residue piles. The Department also refers the commenter to the response to Comment No. 65. Materials separated by screening of finished compost should, in theory, only be contaminants. However, the Department recognizes that some amount of product will adhere to contaminants and agrees that additional screening may generate additional compost product. Ultimately, the material remaining is residue by definition in that it is not yard trimmings and it is not finished compost. Moreover, the Department has documented that the residue includes tennis and golf balls, glass, metal, plastic, wood and other non-compostable materials as typically observed at composting operations. Purposely including these types of materials in product would most likely render it unmarketable.

114. COMMENT: The commenter stated that the regulations should be amended to place no limit on the size of a curing pile or its location. The size of a curing pile has a marginal impact upon the environment. At this point, the aerobic composting process has been completed and the product is ready for distribution. (5)

RESPONSE: The regulations do not set limits on the size and location of curing piles. The Department refers the commenter to the response to Comment No. 65. However, the

Department respectfully disagrees that the composting process has been completed when material is placed into curing piles. The purpose of establishing curing piles is to allow a "finishing" step in the compost process. When rapid decomposition has ceased in windrows, construction of curing piles of a size greater than windrows provides additional insulation allowing core temperatures to rise sufficiently to destroy remaining weed seeds and other plant pathogens. For this purpose, New Jersey's "*Manual on Composting Leaves and Management of Other Yard Trimmings*" recommends a pile size of 12 feet high by 24 feet wide. The Department can consider other pile sizes. However, since material being placed in curing piles should not compacted as it is still undergoing moderate decomposition, pile height will necessarily be restricted to the reach of equipment available at a site, and to control internal pile temperatures to prevent fires.

115. COMMENT: The commenter stated that the regulations should be amended to place no set limitation on aisle space between windrows. A functional standard should be substituted. The space between windrows should be dictated by the requirements of the windrow turning equipment on site. There is no benefit to the operation to have aisle space too small to utilize the equipment. Moreover, there is no environmental detriment associated with aisle space. (5)

RESPONSE: The regulations do not set limits on aisle space between windrows. The Department refers the commenter to the response to Comment No. 65. The Department sets aisle space based on functional information given in an application. The dimension is typically based on equipment specifications and methods of operation.

116. COMMENT: The commenter states that a site should be graded in accordance with the facility's site plan only once a year with any contour changes fixed during the year. Some facilities are always settling and the constant digging, pushing and turning of material can change the contour and grades of the facility. The Department should consider facility contours and grading as they relate to harm, i.e., ponding, or safety of movement in the facility. (5)

RESPONSE: As discussed in response to Comment Nos. 95 and 97, the regulations require that the composting surface withstand heavy equipment use and be sloped to prevent ponding. Maintenance of the surface and the slope of the surface should be scheduled on a regular time interval and an as-needed basis to achieve the requirement. Once per year grading may or may not achieve the goal. The issue of changing contours at the site is best addressed with the General Approval modification process requiring submittal of a new site plan with modified contours and windrow alignment.

117. COMMENT: The commenter stated that the Department should interpret the requirement to mix grass and yard waste into windrows immediately to mean by the end of the day, unless such material is received during the last hour of operation for that day. In such cases, immediately should be interpreted to mean during the morning of the next day of operation. If grass and mixed yard waste is mixed into windrows by the end of the day, there will be no potential environmental concerns. Such an interpretation would recognize the nature of the operation, including the uncertain timing of receipt of materials. It would also allow for efficient scheduling of staff and workflow. Failure to adequately mix these materials into the compost only creates odor problems and makes the composting process less efficient. Therefore it is in the operator's best interest to conduct proper mixing. (5)

RESPONSE: N.J.A.C. 7:26A-4.5(a)14 recodified and amended at N.J.A.C. 726A-4.5(a)6 requires that any recycling center accepting grass clippings must accept the grass clippings only in areas that are least 1000 feet from any areas of human use or occupancy and processing of the material must begin on the day of receipt. The processing of grass clippings at a composting facility typically begins with mixing the grass with some amount of semi-decomposed leaves or wood chips. Thus the requirement is that any grass clippings received on any given working day will be at least mixed with leaves or wood chips during the same working day. Other than the commenter's suggestion that the Department allow the mixing of grass on the following morning, the regulation already requires mixing by the end of the day as suggested. The commenter's dilemma regarding grass received in the last hour of operation should be handled by establishing

hours of material receipt that end at least a half hour before the end of the recycling center's operating hours. In this way, a load of grass clippings can be unloaded and mixed with semi-decomposed leaves before the end of the day. The Department holds that this mixing step is paramount to odor control at compost facilities.

118. COMMENT: The commenter stated that facility operators should only be held responsible for the opening and closing of the facility, as well as the operations in the facility. Operators should not be responsible for times when haulers or others arrive outside the facility. Also, the Department should provide facility operators with flexibility in the manner in which operations are conducted at the facility to comply with the regulations (for example, mixing in new materials by the end of the operation day). (5)

RESPONSE: The recycling rules do not address the arrival of haulers at a facility prior to the opening time of the facility. Facility owners or operators, however, must act to compel haulers to comply with the limitations and constraints of the operational authority or approval while haulers are utilizing the site. With respect operational flexibility, any flexibility that an operator feels is necessary in a proposed operation can be explained in an application when describing recycling center operations. The Department can then develop a general approval that accommodates the flexibility desired. However, since the operational description is reviewed to determine the capacity of a facility both in available space and equipment and manpower, the Department must still define operational boundaries for a facility.

119. COMMENT: The commenter stated that as long as lime or other materials are available within 24 hours, a violation should not be written. (5)

RESPONSE: The Department is not certain to which requirement the commenter is referring. The regulations do not require storage of lime, only that the facility provide the Department with a description of odor controls. Moreover, the Department notes that the current General Approval issued to the commenter's facility does not require storage of lime. Lastly, if a facility is

not satisfied with the conditions of its General Approval, an application for modification can be filed in accordance with N.J.A.C. 7:26A-3.10.

120. COMMENT: The commeter stated that the Department should allow the facility to alternate the use of areas. Alternating area usage promotes better use of the facility and more efficient composting. Moreover it results in no apparent environmental harm. The purpose of the site plan submission should be to establish anticipated volumes and adequacy of the location, not to prevent otherwise permitted activity. (5)

RESPONSE: The Department does allow the alternate use areas as indicated by an applicant on an approved site plan included in a General Approval.

121. COMMENT: The commenter stated that the regulations should be amended to remove the restrictions on the length of time that finished compost can remain on site. The issue is not environmental but economic. The material is a product, available for distribution not further composting. Moreover, some large jobs require substantial amounts of compost in a short time frame. The only way to supply these jobs is to stockpile finished compost. Were the finished compost stored off site, there would be no time limitation. (5)

RESPONSE: The Department proposed and is adopting the deletion of N.J.A.C. 7:26A-4.5(a)15vi, which imposed a 15-month maximum storage time for compost.

122. COMMENT: The commenter stated that if a facility is permitted for leaves and grass only, the Department should allow the facility to accept small amounts of brush (5%) in the mix without penalty. This would recognize the practical reality of the upstream collection process, i.e, how the material is generated by homeowners and collected by municipalities. Moreover, doing so would not create any environmental harm. (5)

RESPONSE: The Department approves those materials that are requested by an applicant if the equipment to be used is compatible and the materials are included in the District Solid Waste Management Plan. If a compost facility is composting source separated leaves and grass clippings and finds that a certain amount of brush is incorporated in loads, a request for modification should be submitted to the host county and to the Department to add brush to the approved recyclable material. The brush would have to be readily compostable to be added to the Class C Recycling Center General Approval. If the brush being received is small branches that require grinding or chipping prior to composting, the material would be Class B recyclable material and a Class B Recycling Center General Approval would be required. The District Solid Waste Management Plan of the host county would have be amended to incorporate this new facility.

123. COMMENT: The commenter stated that requiring the active compost surface to be an improved surface is unnecessary and overly burdensome. An improved surface is not economically feasible and unnecessary for successful compost operations. If trucks and equipment can operate without creating dust or mud and tracking same on roads, then the facility surface is fine for composting. (5)

RESPONSE: The Department agrees that if trucks and equipment can operate without causing dust or mud and tracking same on roads, the compost facility surface is fine for operations. However, since most natural surface soils cannot perform to this level, the Department requires that the surface be improved with placement of crushed aggregate, asphalt, or other material that can withstand heavy equipment use and not produce dust pollution.

124. COMMENT: The commenter stated that the buffer zone for facilities which compost grass should be reduced to 750 feet. (5)

RESPONSE: The buffer distance for areas on the site used for the receipt of grass clippings is established at 1000 feet in an attempt to reduce potential odor problems. The Department has used this distance for more than 10 years. Over this time compost sites accepting grass clippings

at this distance have been found in violation of the Air Pollution Code at N.J.A.C. 7:27 because of odors associated with the grass clippings being received. Accordingly, if the Department were to consider a change in the buffer requirement it would be to increase the distance, not decrease it.

125. COMMENT: The commenter stated that compost should be sampled in accordance with the parameters listed in Schedule A only once for every 10,000 cubic yards of compost produced. Since compost facilities are only permitted for vegetative waste, there is no reason to believe there will be a problem with the final compost product. The commenter's facility has never had a bad compost test in the nine years it has been in operation. (5)

RESPONSE: The regulations do not establish the specifics of sampling plans for compost facilities that are required to sample and analyze finished compost. It is not possible to set a specific volume of material from which a representative sample should be drawn. The number of samples that must be drawn from a population are determined through various statistical tools. Generally, more samples are required where the material being tested is not homogenous relative to the concentration of the parameter of interest, i.e., where one expects that the concentration of a parameter in a sample will deviate greatly from the average concentration of the parameter in the material as a whole, the greater the sample number. As sampling plans for compost sites have been formulated by the Department over the past 2 years, the Department has set, as a starting point, a requirement that one sample be taken for every 1,000 cubic yards of compost under the premise that distribution of heavy metals in compost is relatively uniform. Additionally, depending on the amount of compost expected to be produced, the Department has further allowed compositing of up to 10 of these samples such that the sample sent to a laboratory for analysis represents 10,000 cubic yards in an effort to reduce analytical costs. However, as results from facilities are received, the Department will evaluate the initial premise of uniform distribution. If the basis for reduced sample numbers is found incorrect, the number of samples required will be necessarily increased.

<u>Miscellaneous Class D Recycling Facility Comments</u>

126. COMMENT: The commenter stated that if a recycler/handler accepts material believing there is a market for recycling it but is unable to do so, the material must then be disposed of as hazardous waste. The commenter asked if these facilities would now be guilty of operating without a Resource Conservation and Recovery Act (RCRA) Treatment, Storage, or Disposal (TDS) permit because no recycling is occurring. (21)

RESPONSE: In the scenario presented by the commenter, should a perceived market not be available for the material, it becomes a waste. At that point, the recycler becomes the generator of the waste and would be responsible for the proper management and disposal of the waste in accordance with the hazardous waste regulations at N.J.A.C. 7:26G. The Department notes, however, that it would not issue a Class D facility permit to recycle universal waste unless the applicant could show that a legitimate market exists.

127. The commenter supported the Department's proposal to add the Federal "universal waste" lamps and state-only waste mercury-containing devices, oil-based finishes, and consumer electronics to the existing Department's universal waste program. (9)

RESPONSE: The Department appreciates the commenter's support.

128. COMMENT: The commenter stated that there is an exemption for service centers, but these operations are the ones most likely to have TVs, computers and monitors sitting out along the curb for regular trash or thrown in the dumpster. The Department should examine this situation. While there are all kinds of enforcement and regulations for large generators, operations handling only 10 or 20 computer monitors go unregulated. (1)

RESPONSE: The United States Environmental Protection Agency (USEPA), in developing the universal waste rules, determined that TV repair shops would not be economically viable should they be subject to the universal waste operating standards. The USEPA did not want to shut

down a valuable service industry that prolongs the life of appliances and sends them back into service, thus postponing their disposal. Moreover, items received by these repair facilities are not presumed to be waste at the time of receipt. While the Department concurs with the USEPA that these small businesses are beneficial, it notes that the exemption from Class D recycling facility requirements is not an exemption from all hazardous waste generator requirements. Wastes generated by these facilities which are classified as hazardous would need to be disposed of in accordance with the applicable hazardous waste regulations. Alternatively, should these hazardous wastes also be classified as universal wastes, these businesses may recycle them through the universal waste program as generators of universal waste if it proves more advantageous to them.

129. COMMENT: The commenter stated that the Department should set uniform standards for the environments in which processing facilities operate. In New Jersey alone, there is quite a disparity between the different facilities that are operating under the pilot universal waste program now, and the environments in which they operate. For example, the standards governing indoor v. outdoor processing is one big issue and the standards for outdoor storage and indoor containment another. Inspectors responsible for these facilities need some clarification on how facilities in general should be set up, since the nature of the business is very diverse in the types of materials that are processed and handled. Moreover, the Department needs to allow some flexibility in the design of facilities so that operations can be modified as necessary to accommodate different types and sizes of products processed. Such flexibility should not interfere with keeping orderly and clean facilities and operating in an environmentally healthy and safe fashion. (3)

RESPONSE: The Department, via the pilot projects, has been able to observe the operations of the first New Jersey universal waste demanufacturing facilities. The Department agrees with the commenter that these operations differ greatly in the extent of the demanufacturing undertaken and the types of material collected, and that these differences necessitate specific, and sometimes different, handling and storage standards for the various facilities. These differences will be addressed in each facility's General Approval, as the Department converts these pilot project

approvals to Class D general approvals. Although each facility's general approval will be tailored for that specific facility, all facilities will need to comply with certain minimum processing standards. Specifically, the proposed rule requires that operators store, process, and transfer recyclable materials in containers, tanks or process buildings that meet the general engineering design and operational standards of N.J.A.C. 7:26A-4.6(d). These standards add clear guidelines for indoor and outdoor storage and containment for all Class D Recycling Centers, while also allowing for flexibility in the engineering design of the facilities.

130. COMMENT: The commenter stated that the Department should be aware that there is a great variation in the processing methods employed by facilities The issue is really where equipment can be collected and processed appropriately (for example, detoxify the waste stream by removing the hazardous materials either on site or through subcontracted services that are audited, and monitored) or where equipment is collected, consolidated and exported to unknown destinations that have caused serious problems within New Jersey and other states. The environment is being contaminated both locally and globally with the disposal of electronics, lead, glass and batteries. Some collection programs have been designed or put together based on cost structure, utilizing exporting. When these markets stop and the exporters go out of business, there is a question of how to deal with all of the electronics that are accumulated. The Department, therefore, really should address appropriate in terms of processing. (3)

RESPONSE: With respect to standardizing processing, the Department refers the commenter to the response to comment 129 above.

131. COMMENT: The commenter stated that the addition of new materials to the Class D regulations will be an economic burden. For example, when the original Class D regulations went into effect, the economic impact to the commenter's company was that 20 people were laid off and the operation was moved from New Jersey to Pennsylvania. New Jersey lost money, the local town lost money, though roughly a million dollar investment was made in the Pennsylvania facility. Also, there was a large amount of litigation that is still ongoing. (1)

RESPONSE: The Department respectfully disagrees with the commenter that the addition of new materials to the Class D regulations will be an economic burden. The new materials added are universal wastes. Class D universal wastes are hazardous wastes which may be handled under the streamlined universal waste regulations prior to recycling or disposal, or under the more stringent hazardous waste regulations. The universal waste program is strictly a voluntary program. The Department is not requiring the commenter to handle these materials as Class D universal wastes, only providing that option. The commenter may continue to handle them under the hazardous waste regulations, at greater expense. Therefore, listing them as Class D universal waste under the voluntary universal waste program should result in an economic savings to the commenter.

132. COMMENT: The commenter stated that the Department should rely more on licensed professionals rather than expect Department inspectors to interpret fire regulations and site plan work. These same inspectors then have the ability to write fines based on their interpretations. The Department's regulations overlap too much with other agencies regulations such as Class D regulations and traffic. Existing facilities which have been in operation for some time would have already had traffic studies done. Department inspectors probably do not hold degrees in traffic studies, nor hold licenses from the Department of Community Affairs (DCA) for fire inspection, Occupational Safety and Health Administration (OSHA), nor are qualified to interpret a fire regulation one way, when a regional fire inspector interprets it differently. (1)

RESPONSE: The Department respectfully disagrees with the commenter that its enforcement personnel do not have sufficient expertise to interpret and apply the regulations. When the Department promulgates regulations, it relies on just the type of licensed professionals the commenter mentions. Enforcement personnel rely on the expertise of many people in the Department prior to writing violations as well. They also rely on precedent setting cases and apply those case fundamentals in matters where enforcement actions are pending. Additionally, many inspectors get cross training in areas which are overlapping in nature. Inspectors work side by side with experts in other enforcement areas such as the United States Coast Guard; United States

Department of Transportation and State Police in order to gain experience in areas which overlap. This cross training allows inspectors to later recognize potential hazards to both the public and the environment in general. Lastly, inspectors are encouraged to make contact with intergovernmental agencies where more direct intervention is necessary to protect the public health or environment.

133. COMMENT: The commenter noted that the USEPA is expected to propose a rule this spring that would exclude Cathode Ray Tubes (CRTs) destined for reclamation from Federal hazardous waste rules. The proposal would be less stringent than the current Federal universal waste rules in many instances. Streamlined regulatory requirements similar to the universal waste rule would only apply to the handling of broken CRTs, the processing of the CRTs, and the movement of the processed CRT glass to a facility for recycling. Full hazardous waste regulations would only be required for CRT glass that is disposed of in a landfill or incinerator and only if the disposing entity is not a household or a conditionally exempt small quantity generator. CRTs destined for reuse would not be regulated, non-CRT electronic materials would be presumed excluded, and circuit boards would be recyclable as scrap metal. The commenter believes that such a rule would offer a greater incentive to recycling than the New Jersey proposal, and encourages the State to include language that would automatically adopt the Federal rule or provide for expedited adoption once the Federal rule is finalized. (11)

RESPONSE: The Department notes that through this adoption, it has already put into place a method to automatically adopt changes to the Federal universal waste rules. This process, codified at N.J.A.C. 7:26A-7 is known as "prospective incorporation by reference." Therefore, upon adoption by the USEPA of the changes noted above, such changes would become automatically effective in New Jersey 90 days after the date of the Federal adoption, or on the Federal operative date (whichever is later), unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected state rules. While the Department strives to maintain national consistency and avoid needless departure from the USEPA's rules, the Department's

statutory mandates regarding facilities which recycle materials may necessitate some changes to the Federal regulations. Moreover, the Department reserves the right to evaluate the Federal changes when proposed and determine what additional State requirements, if any, are required to assure protection of human health and the environment.

The Department believes it would be counterproductive to include those provisions in this rulemaking since public comment on the USEPA's proposal might result in changes to that proposal. The Department will, however, have an opportunity to implement those regulations upon adoption by USEPA.

Summary of Agency Initiated Changes

Upon adoption of the new rules, the Department has corrected a number of cross-references in N.J.A.C. 7:26A-3.19 and 4.6 regarding additional design and operational standards for recycling centers as follows:

1. The reference to N.J.A.C. 7:26A-4.6(d) contained in N.J.A.C. 7:26A-3.19(b)5 has been replaced with N.J.A.C. 7:26A-4.6(d)3.
2. The reference to N.J.A.C. 7:26A-4.6(d)4iii contained in N.J.A.C. 7:26A-3.19(b)5iii. has been replaced with N.J.A..C. 7:26A-4.6(d)3iii.
3. The reference to "(b)7v" at N.J.A.C. 7:26A-4.6(c)2iv has been replaced with N.J.A.C. 7:26A-4.6(c)5.
4. The reference to "(b)7vi below" contained in N.J.A.C. 7:26A-4.6(c)5 has been replaced with N.J.A.C. 7:26A-4.6(c)6.
5. The reference to "(b)7vi(8)(A) and (B)" contained in N.J.A.C. 7:26A-4.6(c)6viii(3) has been replace with "(c)6viii(1) and (2) above."
6. The reference to "(f)1I" contained in N.J.A.C. 7:26A-4.6(g)1ii has been replaced with "(g)1i."

The Department is replacing the words "universal waste" at N.J.A.C. 7:26A-4.6(c)1i, 1ii, 2i, and 2ii with "recyclable materials" for consistency with the rest of the regulatory text.

The Department is deleting the Rutgers Cooperative Extension ("the Extension") from the list of agencies charged with the responsibility under the exemption at N.J.A.C. 7:26A-1.4(a)18 to approve and/or develop agricultural management plans, mining area restoration plans, or other plans defining appropriate methods of compost product use and rates of application. It has come to the Department's attention that the Extension does not have the responsibility of doing individual site agricultural management plans, but instead provides education on established general agricultural management plans. Additionally, the Department is revising the regulatory text to clarify the activity that is exempt and for consistency with the exemptions at N.J.A.C. 7:26A-1.4(a)13 and 19 (below under "Changes Made in Response to Comments").

Summary of Changes Made in Response to Comments

In response to comments received, the Department is making a number of minor substantive changes. They are explained in the responses to comments above and summarized below. They are as follows:

1. The Department has revised the penalty table entry for N.J.A.C. 7:26A-4.5(a)7 found in N.J.A.C. 7:26-5.4 for consistency with the regulatory text. Therefore, the reference to "no ponding" has been replaced with "to prevent ponding."

2. The word "unprocessed" has be added to the text at N.J.A.C. 7:26A-1.4(a)3i to clarify the amount of processed and/or unprocessed material a facility could potentially have on site. The limitation on the storage of unprocessed material is based on the amount of material the processing equipment is capable of processing within a one week period of time up to a maximum of 7,500 cubic yards. The exemption further requires that the storage of processed material shall not exceed 7,500 cubic yards. A facility operating pursuant to this exemption, therefore, could potentially have a total of 7,500 cubic yards of unprocessed material and 7,500 cubic yards of processed material stored on-site at the same time.

3. The wording of the regulatory text at N.J.A.C. 7:26-1.4(a)13 has been amended to remove the reference to "any person that receives" to further define the activity exempt from General Approval as was intended. By amending the language as indicated, an individual or governing body may continue to operate multiple compost sites at different locations under the exemption criteria.

4. The wording of the text at N.J.A.C. 7:26A-1.4(a)18i has been amended to allow received materials to remain in paper or biodegradable plastic bags if the processing equipment used by the facility provides for a shredding or cutting action. This change acknowledges that some facilities will use sophisticated processing equipment, rather than low technology methods.

5. The wording of the text at N.J.A.C. 7:26-1.4(a)18 has been amended to remove the reference to "any person that receives" to further define the activity exempt from General Approval as was intended. By amending the language as indicated, an individual or governing body may continue to operate multiple compost sites at different locations under the exemption criteria.

6. The words "performance bond or letter of credit" at N.J.A.C. 7:26A-3.4(c) has been replaced with the more general "financial assurance" to acknowledge that performance bonds or letters of credit are not the only acceptable options available to public entities. Furthermore, the Department is adding language to clarify that for public entities only, the financial assurance may be an identification of specific funds which are to be wholly dedicated to ensure payment of the financial obligation.

7. The Department is readopting N.J.A.C. 7:26A-3.7(a) without the proposed amendment which would have prohibited a facility from receiving Class B recyclable material from off-site for storage, processing or transfer under a Limited Approval. The Department has concluded that in certain cases a facility may need to accept material under a Limited Approval. For example, a facility may need to accept Class B recyclable materials to close a landfill. In some cases, the closure process may be performed in a short enough period of time that the limited approval

would be more applicable than a general approval. Even though limited approvals may be issued for the receipt of Class B materials, facilities will not be allowed to apply for a limited approval as a precursor to obtaining a general approval. The purpose of the limited approval continues to be for projects of a short-term duration as noted in the summary to the proposal.

8. The Department has modified N.J.A.C. 7:26A-4.4 (a) and (b) upon adoption to clarify that it is acceptable to report lamps which are not tubular by individual count, and to report lamps or mercury containing devices in pounds or gallons for shipments which must be manifested.

9. The words "must be handled as a hazardous waste" at N.J.A.C. 7:26A-4.6(a) have been replaced with "shall not be handled by a Class D recycling center" to clarify that universal wastes which are not being recycled are not, therefore, Class D recyclable materials, and may not be handled at a Class D recycling center. Moreover, the language as written was incorrect, since universal wastes which are not recycled may indeed be sent to a hazardous waste facility as universal wastes.

Federal Standards Analysis

Executive Order 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The majority of the provisions in this adoption do not require a comparison with Federal law since they either have no Federal counterpart, set no standards, or are mandated by State statute. These include the general provisions, penalties, fees, and definitions. Some provisions in this adoption, however, do contain some requirements that exceed the requirements and standards set by Federal law.

The readopted and amended used oil rules, and the readopted, amended and new universal waste rules are developed under the USEPA used oil rules at 40 C.F.R. Part 279 and the USEPA universal waste rules at 40 C.F.R. Part 273, respectively, as authorized under the Resource

Conservation and Recovery Act (RCRA). To be authorized by the USEPA to implement the used oil and universal waste program in the State, New Jersey's regulations governing used oil and universal waste must be at least as stringent as the corresponding Federal requirements. The Department is adopting all of the substantive requirements of the USEPA universal waste rule, and retaining the substantive requirements of the Federal used oil management standards. The adopted new rules for universal waste are essentially an incorporation by reference of the Federal program and do not include any standards or requirements which exceed the standards or requirements imposed by the Federal universal waste program. No further analysis of them, therefore, is required.

The readoption, amendments and new rules regarding used oil, however, do contain some standards which exceed those of the Federal used oil program. Those areas where the adopted rules are more stringent than the comparable Federal rules are specifically identified and discussed below.

Mixing used oil with virgin oil products

N.J.A.C. 7:26A-6.1(a)4, adds a restriction on the mixture of used oil with virgin oil products. In the Federal program used oil may be mixed with diesel fuel on-site and used in the generator's own vehicle. This adoption continues to restrict that mixture to used diesel engine fuel at a blending of less than or equal to a maximum rate of five percent or 19:1 virgin fuel to diesel used oil.

Diesel fuel formulated with a heavy hydrocarbon content has been demonstrated to produce higher per-mile and per-unit of power particulate, hydrocarbon, carbon monoxide and nitrogen oxides emissions from both diesel-powered and gasoline powered engines than would be exhibited from the same engine when operated using fuel of proportionally lower heavy hydrocarbon content. Heavy hydrocarbon is a relative term which indicates that a hydrocarbon molecule may be composed of many hydrogen and carbon atoms, thus producing a relatively high or heavy molecular weight. Motor oils specifically and lubricating oils in general, which are the basis of used oil, are typically composed of these heavier hydrocarbon molecules.

The heavier hydrocarbon molecules are less likely to vaporize and combust during the engine firing cycle due in part to their greater mass requiring more heat for vaporization and their size which provides a measure of insulation. The abnormal mass and associated higher energy content also tend to create "hot spots" in the engine combustion chamber, resulting in oxidation of atmospheric nitrogen during the combustion process. The end result in the combustion process is composed of completely combusted molecules (carbon dioxide and water, product of complete combustion), carbon monoxide, unburned and partially burned hydrocarbon molecules and oxidized nitrogen. These environmental impacts are discussed in the SAE paper 932725 entitled How Heavy Hydrocarbons in the Fuel Affect Exhaust Mass Emissions: correlation of Fuel, Engine-Out and Tailpipe specification-The Auto/Oil/Air Quality Improvement Research Program. Although this paper addresses gasoline-fueled engines, the principles are similar.

The fuel Cetane number, a measure of a fuel's volatility profile, can be affected by the addition of thicker and comparatively viscous lubricating oils. Motor oils tend to be engineered to not evaporate under high heat conditions, lending to their poor combustive qualities. This fact, as discussed above, would result in elevating a vehicle's exhaust emission contaminant levels as the SAE paper 950251, Effects of Cetane Number on Emissions from a prototype 1998 Heavy-Duty Diesel Engine, demonstrates that there is a clear relationship between cetane number and excessive exhaust contaminants.

The USEPA finalized Regulation of Fuels and Fuel Additives at 40 C.F.R. Part 80 as part of the Clean Air Act Amendments of 1990, establishing a maximum sulfur content of 0.05% by weight and a minimum Cetane index of 40 for fuels for diesel-powered motor vehicles. As the addition of oils can effect the Cetane Number of the diesel fuel, mixing of used oil may result in oil with diesel fuel non-compliance with the Federal rules at 40 C.F.R. Parts 80 and 86. Commercially available diesel fuel tends to have a Cetane index relatively close to 40 due to the expense of the fuel constituents which would produce a higher number. Mixing of the contents of one crankcase volume of used oil (8-12 quarts) may be sufficient to render the fuel itself to be rendered in non-compliance. Therefore, the adopted rule would restrict the mixing on-site of used oil and diesel fuel at a ratio of 19:1 virgin diesel fuel to used oil or of a maximum rate of five

percent, in order to ensure compliance with both the Federal used oil rules at 40 C.F.R. Part 279 and the Fuel and Fuel Additive Rules-diesel fuel at 40 C.F.R. Parts 80 and 86.

The Department does not estimate an additional cost to diesel fuel engine operators who may be impacted by this restriction, since its used diesel fuel consumed and combusted in a diesel engine is greater than the generation rate of used diesel oil and greater than the 19:1 dilution ratio. The USEPA, in their adoption of the used oil rules at 40 C.F.R. Part 279 (see 57 F.R. 41583), recommends a dilution ratio that assures a high concentration of diesel fuel to used diesel crankcase oil. The Department believes, therefore, that retaining a dilution ratio of 19:1 will ensure the resultant blended fuel will meet the used oil fuel specifications.

Halogen Content of on-Specification Used Oil

At N.J.A.C. 7:26A-6.2(a), the Department is retaining the maximum level for total halogen in used oil of 1,000 ppm. This is more stringent than the Federal comparable used oil management standard which sets the limit at 4,000 ppm.

The USEPA established a level of total halogen at 1,000 ppm for the generator, collector, transporter and processing facility, above which the used oil is defined as a hazardous waste. This classification may be rebutted by either testing the used oil to determine if the halogen level is from an exempt source or if the individual halogen compounds are below a significant concentration, or by applying knowledge (with substantiating documentation) that the oil with the halogen content over the threshold level was from an exempted source. Exempted sources of halogens may then be introduced into or a component of a used oil batch or blend within a tank or container at a used oil storage, transfer or processing facility. The total level of halogens in the on-specification used oil could, therefore, exceed the 1,000 ppm rebuttable level to a limit of 4,000 ppm.

The Department is retaining the on-specification limit at 1,000 ppm oil. Used oil from exempted sources exceeding the l,000 ppm halogen limit may be processed with other used oil provided the final product does not exceed l,000 ppm halogens. A report prepared by the Vermont Agency of Natural Resource Department of Environmental Conservation, entitled "Vermont Used Oil Analysis and Waste Oil Furnace Emission Study" (September 1994) indicated

that the average value of total halogens in used oil is between less than 200 and 350 ppm and that the total organic halogens were between less than between 200 and 300 ppm. Data from New Jersey used oil processing facilities confirms an average concentration for total halogens in used oil of less than 1,000 ppm.

Data provided in a report entitled "Metals Emissions from Combustion of Used Oil Fuel" by the National Oil Recyclers Association indicates that the total quantity of used oil which may have limits of total halogen above the 1,000 ppm limit which would be exempt from the 1,000 ppm limit and rebuttable is approximately 16 percent of the total quantity of used oil available for recycling. This data presents a scenario if all the used oil with typical values below the 1,000 ppm limit were blended with all the used oil from exempted sources with levels above the 1,000 ppm limit, the resulting partitioned mixture would generate a blend below the 1,000 ppm limit.

The current New Jersey air emission standard at N.J.A.C. 7:27 for total organic halogen is 500 ppm. The halogens include bromine, chlorine and fluorine and form acid gases upon combustion which require control equipment to ensure compliance with the New Jersey acid gas emission standards at N.J.A.C. 7:27. Based on the level of total halogen and total organic halogens in the Vermont study, there was an exceedance of an hydrochloric acid (HCl) emission from a waste oil furnace. Control of total halogens at or below the 1000 ppm limit can assist in ensure compliance with the New Jersey HCl emission standards at N.J.A.C. 7:27. This lower threshold will have a positive impact on the air quality of New Jersey and ensure that the combustion of used oil or any blend of on-specification used oil and commercial grade oil products meets air quality emissions levels.

All permit renewals for used oil processors in New Jersey are currently issued at the 1,000 ppm level and keeping this limit at its current level would not result in additional costs within the current system. Further, retaining the halogen threshold of 1,000 ppm will not limit the current or future markets for on-specification used oil. In fact a higher revenue can be generated from a used oil of a higher grade than the Federal on-specification levels.

The Gasoline Retailers Association and the New Car Dealer Association, which represent service stations that collect and aggregate used oil, have indicated that the majority of gasoline stations and service stations have moved away from the use of chlorinated solvents which is a

source of halogens in used oil. According to these associations, the use of chlorinated solvents is being replaced with non-chlorinated solvents such as mineral spirits and kerosene in response to worker health and safety concerns. Furthermore, an exemption from CERCLA liability is available to service stations if they comply with the used oil management standards and do not mix any hazardous substances in their collected used oil. Hazardous substances, as defined by CERCLA, is a broader category than hazardous waste and includes the chlorinated solvents that may increase the total halogen level. The above examples of efforts to replace chlorinated solvents with mineral spirits or kerosene by the service station and other such companies in similar fields which clean parts during maintenance of their equipment will serve to lower overall average total halogen concentration below the 1,000 ppm level, typically to 350 ppm.

The information supplied to the Department indicates that the average total halogen concentration content in used oil is below 1,000 ppm. The readoption of the current limit of 1,000 ppm for halogen is not expected to result in new additional costs or the loss of current markets for used oil processors. This requirement is expected to have a zero added cost factor in the processing of used oil. The benefits to be derived from retaining the halogen on-specification used oil level at no greater than 1,000 ppm are:

1. Continued adequate enforcement to ensure that illegal blending of used oil and characteristically or listed hazardous waste by generators or transporters is prevented;

2.Continued lowering of the acid gas (HCl) emissions from the combustion of fuel oil containing a blend of used oil; and

3. Continued generation of higher revenue to be derived from the sale of used oil meeting the higher requirements.

The new or added costs to the used oil processing industry are expected to be zero.

Requirement for Air Pollution Control Permit

At N.J.A.C. 7:26A-6.2(b), 6.3(c), 6.3(d) and 6.3(f), the Department is retaining provisions which state that 1) the burning of used fuel oil in any device requires an air pollution control permit or other authorization from the Department's air program, and 2) the burning of off-specification used oil in a space heater is prohibited. Therefore, in order to be consistent with the

air pollution control regulations, the readoption appropriately cross-references the requirement to obtain an air pollution control permit. These provisions are more stringent than comparable Federal used oil standards. For a detailed cost benefit analysis for the air pollution control aspects of the permitting and prohibition provisions, see the Department's Federal Standards Analysis included in the adoption of the Used Oil Combustion Rule, N.J.A.C. 7:27-20, on December 6, 1999 (31 N.J.R. 4016).

Used Oil Transfer Facility Notifications

At N.J.A.C. 7:26A-6.6(c), the Department is requiring that owners or operators of used oil transfer facilities provide written notification of the location of the transfer facility to the Department prior to conducting used oil activities at the transfer facility. Notification as to the location of these facilities is necessary to enable the Department to exercise its statutory duty to monitor (through periodic inspection) the activities at used oil transfer facilities in order to ensure that used oils are being managed in an environmentally sound manner at these facilities.

Generally, USEPA assigns EPA ID numbers to a transportation company as a whole and not on an individual site basis, unlike the manner in which EPA ID numbers are assigned to hazardous waste generators and treatment, storage or disposal facilities. All of a particular used oil transporter's trucks and terminals use the same company-wide EPA ID number unless the transporter specifically requests or notifies otherwise. Furthermore, the Department does not require persons who do not actually transport used oil, but are considered used oil transporters solely because they operate a used oil transfer facility to obtain an approved registration statement as a New Jersey solid waste transporter. Therefore, the Department would not be notified when a person with an out-of-state EPA ID number operates a used oil transfer facility in New Jersey.

The Department is therefore requiring notification as to the address of all such used oil transfer facilities so that their activities can be monitored. The notification may be in the form of a letter identifying the address of the facility. A copy of the transporter's original notification and request for EPA ID number or a copy of a subsequent notification to USEPA identifying the address of the used oil transfer facility would also satisfy this requirement. Therefore, this notification requirement adds negligible additional costs to owners or operators of used oil

transfer facilities. Once notified of the location of used oil transfer facilities, the Department will be able to periodically monitor the activities at these facilities, ensuring the environmentally sound management of used oils at all used oil transfer facilities. The Department believes, therefore, that the environmental benefit derived from direct notification to the Department, far outweighs the costs of this additional requirement.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *__thus__*; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:26-5.4 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (f) (No change from proposal.)

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26 and 7:26A, is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in N.J.A.C. 7:26 and 7:26A, then the provision in N.J.A.C. 7:26 and 7:26A shall prevail.

1. - 7. (No change.)

8. The violations of N.J.A.C. 7:26A, Recycling Rules, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

* * *

Rule N.J.A.C.	Rule Summary	Base Penalty
* * *		
7:26A-4.5(a)7	Failure of Class C yard trimming operator to maintain improved	

active composting surface*[, no]* ***to prevent*** ponding or runoff $2,000

* * *

7:26A-1.4 Exemptions

(a) The activities listed below are exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and, unless otherwise specified, the solid waste planning requirements at N.J.A.C. 7:26-6.10 or 6.11. The specific criteria applicable to these activities are as follows:

1. – 2. (No change from proposal.)

3. Recycling activities in which tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts are to be received, stored, processed or transferred provided that:

i. Only the amount of ***unprocessed*** material which the equipment on-site or as may be readily available is capable of processing within a one week period up to a maximum of 7500 cubic yards is stored on-site;

ii. – iv. (No change from proposal.)

4. – 12. (No change from proposal.)

13. ***[**Any person that receives]* ***The receipt of*** yard trimmings for composting *[and]* ***where the activity*** meets the following criteria:

i. – xiv. (No change from proposal.)

14. - 17. (No change from proposal.)

18. *[Any person that receives]* ***The receipt of*** yard trimmings for composting *[and applies]* ***where*** the finished compost product ***is applied*** on site on land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.5, or on mined lands being restored under an approved restoration plan and ***where the activity*** meets the criteria below:

i. Yard trimmings shall be removed from bags, boxes or similar containers prior to windrow

formation *<u>**except that yard trimmings in paper or biodegradable plastic bags need not be removed from such bags if the processing equipment provides for a shredding or cutting action.**</u>* All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in a staging area for removal to an off0site disposal facility;

ii. – vi. (No change from proposal.)

vii. The on-site use of the final compost product shall be subject to an approved agricultural management plan, mining area restoration plan, or other plan defining appropriate methods of compost product use and rates of application, developed by *[an agent of the Rutgers Cooperative Extension,]* *<u>**the**</u>* Natural Resources Conservation Service, or other applicable local, state or Federal agency.

19. *[Any person that receives]* *<u>**The receipt of**</u>* less than 1000 cubic yards of leaves per day *<u>**at a site**</u>* for transfer to a recycling center holding a general approval pursuant to N.J.A.C. 7:26A-3 for the receipt and processing of leaves or to other sites exempted from the requirement to obtain a general approval and operating pursuant to N.J.A.C. 7:26A-1.4, or other specific use approved in writing by the department *[and]* *<u>**where the receipt and transfer activity**</u>* meets the criteria below:

i. – iv. (No change from proposal.)

20. – 21. (No change from proposal.)

(b) – (c) (No change from proposal.)

7:26A-3.4 Supplemental requirements for a general approval to operate a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable materials

(a) – (b) (No change from proposal.)

(c) Prior to issuance of approval to operate a recycling center, the Department may require an applicant to obtain and submit to the Department *[a performance bond or letter of credit]* *<u>**evidence of financial assurance**</u>* in an amount determined by the Department as necessary to effectuate the proper removal, transportation and disposition of all materials which may be abandoned on a recycling center site. *<u>**For privately-owned facilities, the financial assurance may be a performance bond or letter of credit.**</u>* The wording of the performance

bond or letter of credit must be identical to the wording specified in (d) or (e) below, respectively. *__For publicly-owned facilities, the financial assurance shall be an identification of specific funds which are to be wholly dedicated to ensure payment of the financial obligation.__* The criteria to be evaluated by the Department to determine if *[a performance bond or letter of credit]* *__financial assurance__* is needed, and to be used in establishing the *[performance bond or letter of credit]** *__financial assurance__* amount, are the following:

1.-7. (No change from proposal.)

(d) - (e) (No change from proposal.)

7:26A-3.7 Application procedure for limited approval to operate a recycling center for the *__receipt,__* storage, processing or transfer of Class B recyclable material

(a) A person may operate a recycling center for the *__receipt,__* storage, processing or transferring of Class B recyclable materials for a period of time not to exceed 180 days provided that prior approval of the Department has been obtained and a fee has been submitted in accordance with N.J.A.C. 7:26A-2 to the Department. The following information shall be submitted to the Department in order to obtain limited approval:

1. – 2. (No change from proposal.)

(b) - (i) (No change from proposal.)

7:26A-3.19 Additional application requirements for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class D recyclable materials

(a) (No change from proposal.)

(b) Prior to commencing the receipt, storage, processing or transfer of any latex paints, antifreeze, thermostats, lamps (light bulbs), oil-based paints, batteries, mercury-containing devices and consumer electronics at a recycling center, the owner or operator of the recycling center shall submit to the Department, in addition to the information required pursuant to N.J.A.C. 7:26A-3.2, the following information:

1. – 4. (No change from proposal.)

5. A description of the design and operation of process buildings to demonstrate compliance

with N.J.A.C. 7:26A-4.6(d)*[4]* *__3__*, if applicable. The description shall include at least the following:

i. – ii. (No change from proposal.)

iii. A description of the liquid collection and removal system required by *****[4.6(d)4iii]* *__N.J.A.C. 7:26A-4.6(d)3iii__* (if applicable), including a discussion of how accumulated liquids will be characterized and removed.

6. – 7. (No change from proposal.)

7:26A-4.4 Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by February I of each year to the county of origin (if requested) and all municipalities from which recyclable material is received in the previous calendar year. For operators of Class A recycling centers, this report shall also be submitted to the Department. The report shall detail the amount of each source of separated recyclable material, expressed in gallons, tons or cubic yards, accepted from each municipality. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons. Those persons reporting the recycling of lamps shall also report the volume of the received materials in linear feet. *__Non-tubular lamps may be reported as individual units.__* Those persons reporting on mercury-containing devices shall also report the number of devices received. *__Lamps or mercury containing devices which are shipped using a hazardous waste manifest may be reported in pounds or gallons.__*

(b) Except as otherwise provided in N.J.A.C. 7:26A-1.4(b)4, all persons operating pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4 shall provide recycling tonnage reports by February 1 of each year to the applicable municipalities, to the county and to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, P.O. Box 414, Trenton, New Jersey 08625-0414 for the previous calendar year. The report shall detail the amount of each source separated recyclable material, expressed in tons, cubic yards, cubic feet, or gallons received, stored, processed or transferred. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons. Those persons reporting the recycling of lamps shall also report the volume of the received

materials in linear feet. *__Non-tubular lamps may be reported as individual units.__* Those persons reporting on mercury-containing devices shall also report the number of devices received. *__Lamps or mercury containing devices which are shipped using a hazardous waste manifest may be reported in pounds or gallons.__*

7:26A-4.6 Additional Design and Operational standards for recycling centers which receive, store, process, or transfer Class D recyclable materials-- latex paints, antifreeze, thermostats, lamps (light bulbs), oil-based finishes, batteries, mercury-containing devices and consumer electronics, including universal waste

(a) Provisions of this section apply to recycling centers which receive, store, process, or transfer latex paints, antifreeze, thermostats, lamps, oil-based finishes, batteries, mercury-containing devices and consumer electronics. Some thermostats, lamps, oil-based finishes, batteries, mercury-containing devices and consumer electronics may also be universal wastes. Provisions of this subsection apply equally to those materials which are being handled as universal wastes and those which are not. Universal wastes, when not recycled or destined for recycling under the provisions of this chapter *[must be handled as hazardous waste]* *__shall not be handled by a Class D recycling center__*.

(b) (No change from proposal.)

(c) Owners and operators shall comply with the following contingency plan and emergency procedure requirements:

1. The purpose and implementation of the contingency plan is as follows:

i. Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of *[universal waste]* *__recyclable materials__* to air, soil, or surface water.

ii. The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of *[universal waste]* __recyclable materials__* which could threaten human health or the environment;

2. The following are the minimum contents of the contingency plan:

i. The contingency plan shall describe the actions facility personnel shall take to comply with (b)7i. and 7ii. above in response to fires, explosions, or any unplanned sudden or non-sudden release of universal waste to air, soil, or surface water at the facility;

ii. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 C.F.R. Part 112 or 40 C.F.R. Part 1510, or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan per N.J.A.C. 7:1E, the owner or operator need only amend that plan to incorporate universal waste management provisions that are sufficient to comply with the requirements of this section;

iii. (No change from proposal.)

iv. The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see *[(b)7v]* ***(c)5***below), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates;

v.- vi. (No change from proposal.)

3.– 4. (No change from proposal.)

5. At all times, there shall be at least one employee either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of recyclable materials handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in *[(b)7vi]* ***(c)6*** below. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of recyclable materials handled by the facility, and type and complexity of the facility.

6. The emergency coordinator shall implement the following procedures in an emergency situation:

i. – vii. (No change from proposal.)

viii. The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1)- (2) (No change from proposal.)

(3) The owner or operator shall notify the Regional Administrator, and appropriate State and local authorities that the facility is in compliance with *[(b)7vi.(8)(A) and (B)]* ***(c)6viii (1) and (2)*** above, before operations are resumed in the affected area(s) of the facility; and

ix. (No change from proposal.)

(6) – (7) (No change from proposal.)

(d) – (f) (No change from proposal.)

(g) Owners and operators shall comply with the following closure standards:

1. Owners and operators who store or process Class D recyclable materials in tanks shall comply with the following requirements:

i. (No change from proposal.)

ii. If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in *[(f)1i]* ***(g)1i***. above, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills found at 40 C.F.R. 265.310, as incorporated by reference at N.J.A.C. 7:26G-9.

2. – 3. (No change from proposal.)

(h) (No change from proposal.)

Based on consultation with staff, I hereby certify that the above statements including the Federal Standards Statement addressing the requirements of Executive Order 27 (1994), permits the public to understand accurately and plainly the purposes and expected consequences of this readoption with amendments. I hereby authorize this readoption with amendments.

_____ _____

Date BRADLEY M. CAMPBELL, Commissioner
Department of Environmental Protection